

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 211.

R. ASAKURA, PLAINTIFF IN ERROR,

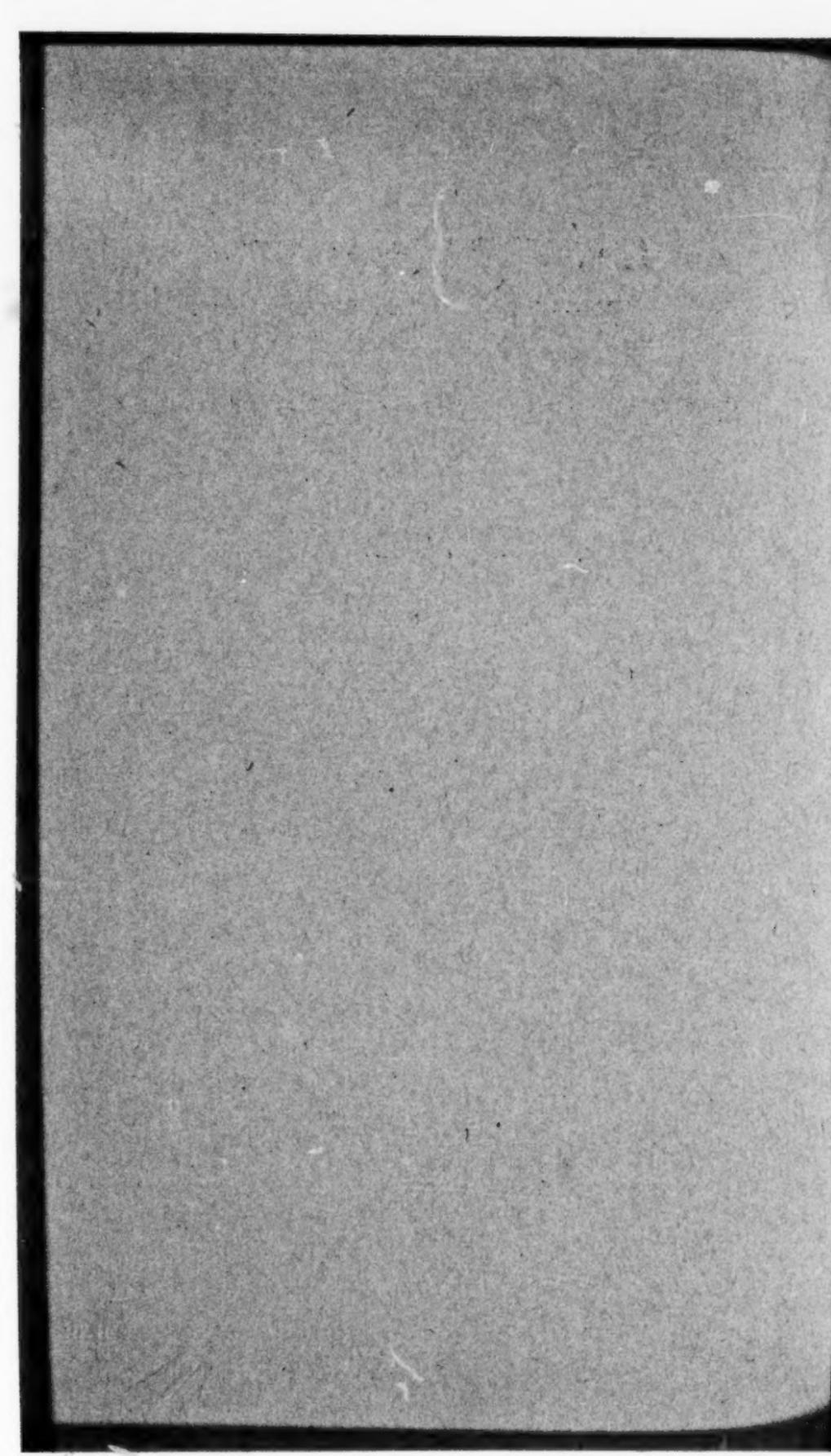
v.

**CITY OF SEATTLE, HARRY W. CARROLL, COMPTROLLER,
AND WILLIAM H. SEARING, CHIEF OF POLICE, OF THE
CITY OF SEATTLE.**

**IN ERROR TO THE SUPREME COURT OF THE STATE OF
WASHINGTON.**

FILED FEBRUARY 1, 1923.

(29,375)



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INDEX.

	Original.	Print.
Record from superior court of King County, Washington.....	1	1
Complaint	3	1
Order granting temporary restraining order and order to show cause.....	10	6
Return to order to show cause.....	12	7
Demurrer	13	7
Affidavit of Robert B. Hesketh.....	14	8
Affidavit of H. W. Carroll.....	16	9
Order overruling demurrer and granting temporary in- junction	18	9
Notice of appeal.....	20	10
Clerk's certificate.....	21	11
Statement of facts.....	21½	11
Complaint	22	11
Affidavit of Robert B. Hesketh.....	30	11
Affidavit of H. W. Carroll.....	32	11

INDEX.

	Original.	Print.
Order settling statement of facts.....	33	12
Testimony of R. Asakura.....	37	13
Robert B. Hesketh.....	43	16
Phillip Tindall.....	46	18
John E. Carroll.....	48	19
R. Asakura (recalled).....	49	20
Oral opinion, Frater, J.....	51	21
Order settling statement of facts.....	53	22
Plaintiff's Exhibit A—Application of R. Asakura for license	54	22
Plaintiff's Exhibit B—Extract from minutes of the city council of Seattle, August 16, 1920.....	56	24
Defendants' Exhibit 1—Ordinance No. 42323 of the City of Seattle.....	58	26
Answer	63	33
Decree	65	34
Notice of appeal.....	67	35
Clerk's certificate.....	68	36
Proceedings in supreme court of Washington.....	69	36
Opinion, Mackintosh, J.....	69	36
Judgment	74	40
Petition for writ of error.....	75	40
Assignment of errors.....	77	41
Order granting writ of error.....	79	43
Bond on writ of error.....	80	43
Stipulation extending time.....	82	43
Writ of error.....	84	44
Citation and service.....	86	45
Clerk's certificate.....	88	46

1-3 In the Superior Court of the State of Washington for King County

No. 152,320

R. ASAKURA, Plaintiff,

v.

THE CITY OF SEATTLE, Municipal Corporation; Harry W. Carroll, as Comptroller of the City of Seattle, and William H. Searing, as Chief of Police of the City of Seattle, Defendants.

COMPLAINT

[Filed July 12, 1921]

For cause of action against defendants, plaintiff alleges:

I

That the defendant, The City of Seattle, is now and at all times hereinafter mentioned was a municipal corporation of the first class organized and existing under and by virtue of the laws of the State of Washington.

II

The defendant Harry W. Carroll is the duly appointed, qualified and acting Comptroller of the defendant, the City of Seattle, and has been such prior to and ever since the passage of the ordinance of the City of Seattle hereinafter mentioned.

III

The defendant William H. Searing is now and prior to and ever since the passage of the ordinance hereinafter mentioned has been the duly appointed, qualified and acting Chief of Police of the defendant, The City of Seattle.

IV

That the plaintiff is now and at all times hereinafter mentioned has been a subject of the Emperor of Japan; that plaintiff has been lawfully residing in the City of Seattle, King County, State of Washington, continuously since the year 1904, duly entered the United States, and having complied with all acts of Congress and
4 all regulations appertaining or relating to the entry of aliens into the confines of the United States.

V

That ever since the month of July, 1915, the plaintiff has been engaged in business as a pawn broker, and is now, prior to and ever since the passage of the ordinance hereinafter mentioned has been so engaged, at his place of business No. 526 King Street, in Seattle, Washington.

VI

During the whole of the time plaintiff has been engaged in business as aforesaid, he has at all times complied with all laws and ordinances relating to or respecting his business, and has conducted the same honestly and in good faith and in all respects in strict fidelity, honesty and integrity; that plaintiff's said place of business is in all respects a fit and suitable place for conducting the business of pawn broker, and at all times hereinafter mentioned or heretofore mentioned has been such. That plaintiff speaks, reads and writes the English language.

VII

That there is now and ever since the 2nd day of July, 1921 has been in full force and effect Ordinance No. 42323, entitled:

"An ordinance relating to, licensing and regulating the business of pawnbroker, in the City of Seattle, defining offenses, and providing penalties for the violation thereof, and repealing Ordinances numbered 14404, 27496, 33731, and all other ordinances and parts of ordinances in conflict therewith."

passed by the City Council of the City of Seattle, on the 31st day of May 1921, and approved by the Mayor of said City on the 2nd day of June, 1921.

VIII

That said ordinance was passed for the sole purpose of preventing any alien from securing a license to engage in the business as pawn broker in the City of Seattle, and as a part and parcel of a plan on which the City of Seattle has for more than a year last past been embarked for the purpose of preventing a subject of the Emperor of Japan, lawfully in the United States and lawfully engaged 5 in business in the City of Seattle, from being able to carry on or engage in business in the City of Seattle in which a license so to do is required by the City of Seattle.

IX

That this plaintiff has not applied to the City of Seattle, for a license to engage in business as a pawn broker as required by the terms of said ordinance above mentioned and pleaded, because it

would be utterly useless for the plaintiff so to do, and because the city of Seattle would not receive from the plaintiff an application for a license so to do, and the refusal of the City of Seattle to receive such application would be by virtue of the said ordinance above mentioned, *and the refusal of the City of Seattle to receive such application would be by virtue of said ordinance above mentioned* and the defendant the City of Seattle would not grant to the plaintiff a license to engage in business as a pawn broker for the sole and only reason that the plaintiff is a subject of the Emperor of Japan, and is not a citizen of the United States.

X

That heretofore, on and ever since the 23d day of November, 1906, and until the passage and approval of said ordinance first hereinabove mentioned, there was in full force and effect, Ordinance No. 14404 of the City of Seattle, entitled:

"An Ordinance, to license and regulate the business of pawn broker in the City of Seattle, providing penalties for the violation thereof, and repealing all ordinances or parts of ordinances inconsistent therewith."

passed by the City Council of the Defendant City on the 22d day of October, 1906, and approved by the Mayor of said City on the 24th day of October, 1906.

XI

That heretofore on the 9th day of August, 1920, the plaintiff duly made application for a license to engage in the business of a pawn broker *as his place of business above mentioned*, under and by virtue of said ordinance last above mentioned, and for a renewal of his license which had *had* theretofore been granted to him by the City under and by virtue of said ordinance, such application being in due

form and required by the City, and therewith did and performed all things and acts required by the City, for the making of said application, which application was afterwards duly referred to the License Committee of the defendant city, which Committee duly made report to the City Council of the defendant City that a license be granted to the plaintiff as applied for, but on the 23d day of August, 1920, Council of the defendant City refused to grant said license and refused to pass an ordinance theretofore duly introduced into the City Council granting a license to the plaintiff, as above set forth, upon the sole and only ground that plaintiff was a subject of the Emperor of Japan, and was not a citizen of the United States of America, despite and contrary to the fact that plaintiff at all times had been and then was a fit and suitable person to have and hold a license from the defendant City to engage in business as aforesaid, and despite the fact that his place of business then was and theretofore at all times had been a fit and suitable place to engage in such business as aforesaid.

XII

That on the 5th day of April, 1911, there was duly proclaimed by the President of the United States, with the advice and consent of the Senate of the United States, a Treaty between the United States and the Empire of Japan, which Treaty ever since has been and now is in full force and effect.

XIII

That said Ordinance first hereinabove mentioned is in violation of and contrary to said treaty between the United States and the Empire of Japan; *the* protection of the provisions of said Treaty and especially of Article I thereof is hereby invoked by this plaintiff and plaintiff insists that by virtue of said Treaty and especially Article I thereof, defendant City cannot lawfully refuse to grant to the plaintiff a license to engage in business as a pawnbroker and cannot lawfully prevent plaintiff from engaging in said business in the City of Seattle.

XIV. That said Ordinance first hereinabove mentioned is void and in contravention of Sections 3 and 12 of Article 1 of
 7 the Constitution of the State of Washington, in that it deprives plaintiff of liberty and property without due process of law, and denies to plaintiff the equal protection of the law guaranteed by said sections. The protection of the provisions of Sections 3 and 12 of Article 1 of the Constitution of the State of Washington is hereby especially invoked by the plaintiff, and plaintiff insists that by virtue of said provisions of said Article the defendants City cannot deny to the plaintiff a license to engage in business as a pawn broker, and cannot prevent the plaintiff from engaging in business as a pawn broker in the City of Seattle.

XV. That said ordinances first above mentioned is void and in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it deprives the plaintiff of his liberty and property without due process of law, and denies to plaintiff the equal protection of the law. The protection of the provisions of said Section 1 of the Fourteenth Amendment to the Constitution of the United States is hereby especially invoked by this plaintiff, and plaintiff insists that by virtue of the provisions thereof the defendant City cannot lawfully deny to the plaintiff a license to engage in business as a pawn-broker in the City of Seattle, and cannot prevent the plaintiff from engaging in business as a pawn-broker in the City of Seattle.

XVI. That in order to engage in the business of a pawn-broker successfully, or at all, it is necessary that the same be operated continuously and without any interruption in order to maintain the good will of the business and any interruption of said business will cause the plaintiff irreparable loss.

XVII. That the defendant Comptroller has threatened to arrest this plaintiff because he is engaged in the business of a pawn-broker and is a subject of the Emperor of Japan, and is denied a license

to engage in the business of pawn-broker by the defendant City, and the defendants will, unless enjoined by this Court from so doing, arrest the plaintiff from day to day while he engages in business as a pawn-broker because the defendant City will not permit him to have a license so to do, for the sole and only reason that he is a subject of the Emperor of Japan, and not for any other reason whatsoever. That if the defendants are permitted to arrest the plaintiff his business will be interrupted, and a large and irreparable loss will result to him, and his reputation will be seriously injured and damaged, and his business will fall into disrepute by reason of such arrests, and will be broken up and destroyed, and the good will which he now enjoys in his business aforesaid will be irreparably lost to him. That if the defendants are permitted to arrest him they will irreparably damage him, and if this court shall not grant an injunction restraining the enforcement of said ordinance, the plaintiff will be arrested from day to day, in order to enforce said ordinance against him, and be compelled to defend himself in a multiplicity of actions, and the plaintiff can have relief only by virtue of the equity jurisdiction of this court, and by reason of an injunction restraining defendants from arresting him for a violation of said ordinance, and until such time as the defendant City — willing to grant to, and shall grant to, the plaintiff a license to engage in the business of a pawn-broker aforesaid.

XVIII. That plaintiff has no adequate remedy at law, but is relieved only in a court of equity. That if the plaintiff shall be compelled to give notice of an application for a temporary injunction, the defendants will cause him to be arrested before a hearing can be had thereon, and the plaintiff will be irrevocably damaged thereby, and his business will suffer severely as a result thereof, and the plaintiff will suffer a substantial financial loss as a result thereof. That it is necessary that a temporary restraining order issue herein without notice, as hereinafter prayed for, in order that plaintiff may have the relief to which he is entitled.

XIX. That the plaintiff always has been and now is willing and ready to comply with any valid or constitutional ordinance of the City of Seattle respecting the business of a pawn-broker, and 9 at all times has been and now is willing and ready to pay the defendant City any valid license-fee which defendant City shall exact for that purpose, and at any time hereafter will so comply with said ordinances and make such payments.

Wherefore plaintiff prays judgment against the defendants as follows:

1. That a temporary restraining order issue herein enjoining and restraining the defendants above-named, and their and each of their agents, servants and attorneys from arresting or attempting to arrest the plaintiff by reason of the fact that he is operating the business of a pawn-broker without having a license from the City of Seattle so to do.

2. That an order to show cause be issued by the Court, to the defendants above-named directed, ordering and directing them to

show cause before the Court why they should not be so enjoined and restrained until the entry of the final decree herein.

3. That upon the final hearing herein the defendants be perpetually enjoined and restrained from enforcing or attempting to enforce the ordinance first hereinabove mentioned against the plaintiff.

4. That the plaintiff have such other and further relief as to the Court may seem just and meet in the premises.

Piles & Halverstadt, Attorneys for Plaintiff.

STATE OF WASHINGTON,

County of King, ss:

R. Asakura, being first duly sworn, on oath deposes and says: I am the plaintiff above named, I have read the foregoing complaint, know the contents thereof, and each and every allegation therein is true, except such allegations as are made on information and belief and as to such allegations I believe them to be true. I make this positive affidavit in support of an application for a temporary restraining order and a temporary injunction herein.

R. Asakura.

Subscribed and sworn to before me this 11th day of July, 1921.

Dallas V. Halverstadt, Notary Public in and
for the State of Washington, Residing
at Seattle.

[File endorsement omitted.]

10 In the Superior Court of the State of Washington for King County

[Title omitted]

ORDER GRANTING TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

[Filed July 12, 1921]

This cause came on for hearing before the court this 12th day of July, 1921, upon the application of the plaintiff above-named for a temporary restraining order and temporary injunction herein against the defendants above-named, on the grounds and for the reasons in the bill of complaint on file herein in said court, and to the effect thereon prayed for, and it appearing to the court that it is necessary that a temporary restraining order issue herein without notice, and the court being fully advised in the premises,

It is ordered that the defendants above named, and their and each of their agents, servants and attorneys, be and they hereby are enjoined, until the further order of this court, from enforcing or attempting to enforce Ordinance No. 42323 of the City of Seattle

against the plaintiff, or in any wise interfering with the business of the plaintiff by reason of said ordinance.

It is further ordered that the defendants above named and each of them show cause before this court on the 15th day of July, 1921, in Department No. 1 thereof, in the King County Court House, in the city of Seattle, King County, Washington, at the hour of 9.30 o'clock A. M. why they should not be so enjoined and restrained until the entry of the final decree herein.

It is further ordered that this temporary restraining order become effective upon the plaintiff making and filing in the office of the clerk of the above entitled court his good and sufficient bond in the sum of \$500.00, with surety thereon to the satisfaction of 11 this Court.

Done in Open Court this 12th day of July, 1921.

King Dykeman, Judge.

[File endorsement omitted.]

12 In the Superior Court of the State of Washington in and for King County

[Title omitted]

RETURN ON ORDER TO SHOW CAUSE

[Filed July 18, 1921]

Come now the above-named defendants and for a return on the order to show cause issued herein by the Honorable King Dykeman, one of the Judges of the above-entitled Court, on the 12th day of July, 1921, make return and show cause by the demurrer and affidavits hereunto annexed.

Walter F. Meier, Corporation Counsel;
Thomas J. L. Kennedy, Charles T. Don-
worth, Assistants, Attorneys for the De-
fendants.

[File endorsement omitted.]

13 In the Superior Court of the State of Washington for King County

[Title omitted]

DEMURRER

[Filed July 18, 1921]

Come now the above named defendants and demur to the complaint herein upon the ground and for the reason that it appears from the face thereof:

1. That the court has no jurisdiction of the subject-matter of the action; and
2. That the complaint does not state facts sufficient to constitute a cause of action.

Walter F. Meier, Corporation Counsel;
 Thomas J. L. Kennedy, Assistant;
 Charles T. Donworth, Assistant, Attorneys for the Defendants.

[File endorsement omitted.]

14 In the Superior Court of the State of Washington in and for
 King County

[Title omitted]

AFFIDAVIT OF ROBERT B. HESKETH

[Filed July 18, 1921]

STATE OF WASHINGTON,
County of King, ss:

Robert B. Hesketh being first duly sworn on oath deposes and says:
 That he is now and for many years last past has been a member of the City Council of the City of Seattle, which is one of the defendants herein; that he is now, and since March 21, 1921, has been, the president of said City Council and chairman of the license department thereof.

That Ordinance No. 43323 referred to in Paragraph VIII of the complaint was enacted for the purpose of regulating the business of pawn-broker in said City, pursuant to the police power vested in said City by the Constitution of the State of Washington; that the statement contained in said Paragraph VIII, of the complaint to the effect that said ordinance was passed as a part and parcel of a plan which the City has for more than a year last past been embarked upon for the purpose of preventing a subject of the Emperor of Japan from engaging in any business for which a license is required, is incorrect; that said ordinance regulates the business of pawnbroker by limiting the persons who may engage therein to citizens of the United States and denying such privilege to all aliens, whether subjects of the Emperor of Japan or not; that the City Council could not lawfully grant a pawnbroker's license to the plaintiff under the provisions of said ordinance, for the reason that the plaintiff

15 is an alien and not a citizen of the United States.

Robt. B. Hesketh,

Subscribed and sworn to before me this 18th day of July, 1921.

H. R. Fullerton, Notary Public in and for
 the State of Washington, Residing at
 Seattle.

[File endorsement omitted.]

- 16 In the Superior Court of the State of Washington in and for
King County

[Title omitted]

AFFIDAVIT OF H. W. CARROLL

[Filed July 18, 1921]

STATE OF WASHINGTON,
County of King, ss:

H. W. Carroll being first duly sworn on oath deposes and says: That he is now, and for more than nine years last past has been, the duly elected, qualified and acting Comptroller of the City of Seattle, and is one of the defendants in the above-entitled action.

That the statement contained in Paragraph VII of the complaint herein, to the effect that affiant had threatened to arrest the plaintiff because he is carrying on the business of a pawn-broker and is a subject of the Emperor of Japan is incorrect and misleading; that, under the provisions of Ordinance No. 42,323 no license to engage in business as a pawn-broker can be granted to any alien, whether a subject of the Emperor of Japan or not; that it is the duty of affiant to cause the arrest of all persons who, to his knowledge, are carrying on without a license, any business for which a license is required; that it is affiant's intention to perform his duty in the premises whether the offending party is a subject of the Emperor of Japan or is an alien subject of any other country whatsoever.

H. W. Carroll.

Subscribed and sworn to before me this 15th day of July, 1921.

H. R. Fullerton, Notary Public in and for
the State of Washington, residing at
Seattle.

- 17 Copy of the within — received and due service thereof acknowledged this 18th day of July, 1921.

Piles & Halverstadt, Attorney- for Pltf.

[File endorsement omitted.]

- 18 In the Superior Court of the State of Washington for King
County

[Title omitted]

ORDER GRANTING TEMPORARY INJUNCTION AND OVERRULING DEMURRER

[Filed July 21, 1921]

This cause came on for hearing before the Court on the 20th day of July, 1921, upon the order to show cause, heretofore entered in

said cause, why a temporary injunction should not issue herein, the plaintiff appearing by Halverstadt & Guie, his attorneys, and the defendants appearing by Walter F. Meier, Corporation Counsel, T. J. L. Kennedy and Charles T. Donworth, Assistant Corporation Counsel, respectively, of the City of Seattle, upon the demurrer of the defendant to the complaint herein, and the matter was argued and submitted to the Court for consideration and decision, and the Court being fully advised in the premises,

It is ordered that the defendant's demurrer to the complaint herein be, and the same hereby is, overruled.

It is further ordered that the defendants above-named, and each of them, and their and each of their agents, servants and employes, be and each hereby is enjoined, until the entry of the final decree herein, from enforcing or attempting to enforce Ordinance No. 42,323 of the City of Seattle against the plaintiff, or in any wise interfering with the business of the plaintiff by reason of said Ordinance.

To all of which rulings the defendants except and their exception is allowed.

Done in open Court this 21st day of July, 1921.

A. W. Frater, Judge.

19 [File endorsement omitted]

20 In the Superior Court of the State of Washington for King County

[Title omitted]

NOTICE OF APPEAL

[Filed July 30, 1921]

To R. Asakura, above-named plaintiff, and Messrs. Halverstadt & Guie, his attorneys of record:

You and each of you are hereby required to take notice that the above-named defendants, and each of them, deeming themselves aggrieved thereby, appeal to the Supreme Court of the State of Washington from that certain order entered herein on the 21st day of July, 1921, by the Honorable A. W. Frater, one of the Judges of the above-entitled court, granting the plaintiff a temporary injunction; and from each and every part of said order.

Dated at Seattle, Washington, this 29th day of July, 1921.

Walter F. Meier, Corporation Counsel;
Thomas J. L. Kennedy, Assistant;
Charles T. Donworth, Assistant, Attorneys for Defendants.

Copy of within — received and due service thereof acknowledged this 29th day of July, 1921.

Guie & Halverstadt, Attorneys for Plff.

[File endorsement omitted.]

21

CLERK'S CERTIFICATE

STATE OF WASHINGTON,
County of King, ss:

I, George A. Grant, County Clerk of King County and ex-officio Clerk of the Superior Court of the State of Washington in and for King County, do hereby certify that the foregoing is a full, true and correct transcript of so much of the record and files in cause No. 152,320, entitled R. Asakura v. The City of Seattle, a municipal corporation, et al., as I have been directed by the Appellants to transmit to the Supreme Court of the State of Washington.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 28th day of October, 1921.

George A. Grant, County Clerk, etc., By R
W. Fleming, Deputy. (Seal.)

21½

[File endorsement omitted]

[Title omitted]

STATEMENT OF FACTS

[Filed Sept. 8, 1921]

22-29 In the Superior Court of the State of Washington in and for King County

COMPLAINT

[Omitted; printed side page 3]

30 & 31 In the Superior Court of the State of Washington in and for King County

AFFIDAVIT OF ROBERT B. HESKETH

[Omitted; printed side page 14]

32 In the Superior Court of the State of Washington in and for King County

AFFIDAVIT OF H. W. CARROLL

[Omitted; printed side page 16]

33-35 JUDGE'S CERTIFICATE TO STATEMENT OF FACTS

[Filed Sept. 21, 1921]

STATE OF WASHINGTON,
County of King, ss:

Now, on this — day of September, 1921, the day fixed for the settlement and certification of the Statement of Facts in the foregoing entitled action, pursuant to due notice of the application for such settlement and certification of said Statement of Facts, the parties to said action appearing this day by their respective attorneys, before me, A. W. Frater, for the purpose of settlement of said Statement of Facts:

Therefore, I, A. W. Frater, one of the Judges of the Superior Court of the State of Washington, before whom the application for temporary injunction in the foregoing cause was tried, do hereby certify that the matters and proceedings contained in the foregoing Statement of Facts are matters and proceedings occurring in said cause, and that the same contains all of the material facts, matters and proceedings heretofore occurring in said cause not already a part of the record therein;

I do further certify that the foregoing Statement of Facts contains all the evidence and affidavits introduced upon said application for temporary injunction therein.

Consul for both parties being present and consenting.

Done in open court this 21st day of September, 1921.

A. W. Frater, Judge. Entd. 5.

[File endorsement omitted.]

36 In the Superior Court of the State of Washington in and for
King County

[Title omitted]

Be it remembered that heretofore and on to-wit, December 22, 1921, the above entitled cause came regularly on for trial in the above court, and before the Honorable A. W. Frater, one of the Judges of said court, in Department No. 2 thereof, sitting without a jury;

The Plaintiff appearing by D. V. Halverstadt, Esq., of Messrs. Guie & Halverstadt, his attorneys and counsel;

The Defendants appearing by Charles T. Donvorth, Esq., Assistant Corporation Counsel;

Whereupon the following proceedings were had and done, to-wit:

37 R. ASAKURA, called as a witness in his own behalf, was duly sworn and testified as follows:

Direct examination.

By Mr. Halverstadt:

Q. Your name is R. Asakura?

A. Yes.

Q. Where are you engaged in business? What street number?

A. 526 King Street.

Q. When did you come to Seattle? What year?

A. 1904.

Q. Did you come direct from Japan?

A. Yes.

Q. You were born of Japanese parentage?

A. Yes, sir.

Q. Where were you born? In the United States or Japan?

A. In Japan.

Q. In Japan?

A. Yes.

Q. Where did the boat land on which you came to the United States?

A. I came to Victoria and Vancouver and then come to here.

Q. In coming from Vancouver to the United States did you go through the Immigration Department?

A. Yes.

Q. Did you do everything that the Immigration officers asked you to do?

A. Yes, sure I did.

Q. Where have you lived since coming to the United States?

A. I stay here all the time.

Q. In the City of Seattle?

38 A. Yes, City of Seattle.

Q. What is your business?

A. Pawn broker and watch maker.

Q. Where are you engaged in business?

A. Where?

Q. Yes. What street number?

A. 526 King.

Q. In the City of Seattle?

A. Yes, in the City of Seattle.

Q. When did you first engage in the pawn broker business?

A. 1915, I think.

Q. 1915?

A. Yes.

Q. Have you been engaged in that business continuously since 1915?

A. Yes.

Q. At the same place?

A. At the same place.

Q. Have you ever been arrested?

A. No, not arrested.

Q. You have never been arrested?

A. No.

Q. Do the police officers of the City of Seattle come around to look over your books?

A. Oh, yes.

Mr. Donworth: I think that is immaterial, Your Honor; I do not see any materiality to that.

The Court: I will let him show that. I believe there is an ordinance that requires that, doesn't it?

Mr. Halverstadt: Yes, sir.

39 The Court: They do that with all pawn brokers.

Mr. Donworth: There is no contention here that he is running a place that is not satisfactory to the police officers. That has not nothing to do with this case.

Mr. Halverstadt: Will you stipulate then that in operating his business he complied with the ordinances of the City and the statutes of the State?

Mr. Donworth: He has not complied with this ordinance.

Mr. Halverstadt: Except this last ordinance.

Mr. Donworth: He has not complied with the last ordinance; that is the only ordinance that is in this case.

Mr. Halverstadt: I will put it this way: Will you stipulate that heretofore he has always complied with the ordinances of the City of Seattle except the present ordinance requiring the taking out of a license?

Mr. Donworth: Well, I do not know whether that is a fact or not, Mr. Halverstadt. I think further it is immaterial whether that is the fact or not.

The Court: He says he was never arrested anyway; that he has never been under arrest.

Mr. Halverstadt: It might not necessarily follow because he was not arrested he had been following the ordinance relating to making these records and reports.

Mr. Donworth: You do not claim in your complaint he violated any former ordinance.

Mr. Halverstadt: I do state in my complaint he has complied with the ordinances of the City of Seattle and you have denied it.

The Court: Let him answer the question.

40 Q. How often do the police officers come down and look over your books?

A. Sometimes every morning; sometimes he come after two days; I don't know.

Q. Every day or two?

A. Yes, he come pretty near every day.

Q. Has that been true ever since you have been engaged in business?

A. Yes.

Q. Have you made all the reports which the ordinance requires?

A. Yes, I do.

Q. Have you made all the reports which the Police Department require?

A. Yes.

Mr. Donworth: It is understood my objection runs to all this.

The Court: Oh, yes. I do not think it is very material but if Mr. Halverstadt wants to make a record, I will let him go ahead.

Q. Do you speak and read the English language?

A. I think so.

Mr. Donworth: He seems to be speaking it now.

Mr. Halverstadt: Cross examine. Just one other thing.

Q. When you engaged in business what amount of capital did you have in the pawn broker business?

A. I think about \$1,000.

Q. How much capital have you in the business now?

A. Now, I think about \$5,000.

Q. Suppose you are compelled to go out of business for a time, what effect would it have on your business?

A. What is it?

Q. Suppose the City made you stop acting as a pawn
41 broker for a while, what effect would that have on your business as a pawn broker?

A. I cannot keep the business. I cannot live, because I got it for myself and wife.

Q. Is it necessary to keep open continuously to hold your trade?

A. Yes.

Q. If you shut up for a while will your trade leave you? Would your trade go elsewhere?

A. I think so; the customers go some place else.

Q. Now state to the Court, if you will, what kind of a district you are located in. Is it a business district or is it a residence district?

A. It is a business district, I think.

Q. Have the officers from the Health Department of the City of Seattle ever been down to look through the building in which you are located?

A. I think so.

Q. About how often?

A. I never heard nothing about that.

Q. Have you ever seen the officers?

A. Oh, yes; I see them sometimes come down there.

Q. About how often?

A. Sometimes a month and sometimes two months; a month or two month.

Q. So far as you know -as there ever been any complaint made by the Building Department as to the building in which you are located?

A. I think so.

Q. Listen; I don't think you understand. As far as you
42 know has any complaint been made as to the building in
which you are located?

A. I have heard nothing.

Q. You have been there continuously since 1915?

A. Yes.

The Court: Let me ask you a question. Where is your place,
again?

A. 526 King Street.

Mr. Halverstadt: Cross examine.

Cross-examination.

By Mr. Donworth:

Q. Mr. Asakura, did you apply for a license under the new ordinance that went into effect on July 2nd, this year?

Mr. Halverstadt: It is pleaded in the complaint that he did not.

A. No.

Mr. Halverstadt: Just a minute. It is pleaded in the complaint that he did not.

The Court: That ought to be sufficient.

Mr. Donworth: No further questions.

Mr. Halverstadt: That is all.

(Witness excused.)

43 ROBERT B. HESKETH, called as a witness in behalf of Plaintiff, was duly sworn and testified as follows:

Direct examination.

By Mr. Halverstadt:

Q. Your name is Robert B. Hesketh; you are a councilman for the City of Seattle and have been for a number of years past continuously?

A. Yes, sir.

Q. You were subpoenaed to produce here at this trial a report of the Police Department on the application of R. Asakura for a pawn broker's license in the month of August, 1920. Have you got the report?

A. Yes, sir; it is July, 1920.

Q. July, 1920?

A. Yes.

Q. Will you produce it?

(Witness hands paper to counsel.)

Mr. Halverstadt: I offer the report in evidence.

Mr. Donworth: That is objected to, Your Honor, on the ground that it is absolutely immaterial as to the issues in this case. This is a report made under a former ordinance and has nothing to do with this ordinance at all. The whole question in this case is whether the City of Seattle has a right to pass an ordinance limiting the right or privilege of engaging in the pawn broker business to citizens of the United States.

The Court: What is that report?

Mr. Halverstadt: It is the report of the Police Department to the City Council saying they do not oppose the granting of that license, the application being made under a prior ordinance.

44 Mr. Donworth: It is immaterial whether the plaintiff here is the best pawn broker they ever had in the City, or the worst.

The Court: I will let you read it into the record. I think it is immaterial myself, but to make your record I will let you read it.

Mr. Halverstadt: It is on the stationery of the City of Seattle, Police Department. (Reading:)

"July 24, 1920.

Hans Damm, Inspector,
Department of Police.

SIR:

Re Pawn Brokers

The renewal of the application of R. Asakura, 526 King Street, for renewal of license as pawn broker will not be resisted by this office.

Yours respectively,

J. C. Wickman, Lieut. Detectives, Pawn Shop
Detail."

The Court: You may take that back. That is a part of your records, I suppose.

Mr. Halverstadt: I offer in evidence a certified copy of application for license made by Mr. Asakura, to show the action of the License Committee thereon.

The Court: What date is that?

Mr. Halverstadt: That was dated August 16, 1920.

The Court: That is under the old ordinance?

Mr. Halverstadt: Yes.

Mr. Donworth: Objected to on the ground it is immaterial.

45 The Court: Objection sustained.

Mr. Halverstadt: I offer it and ask to have it marked for the purpose of the record.

The Court: Let it be marked.

(Paper referred to marked Plaintiff's Exhibit "A" for identification, offered and refused.)

Mr. Halverstadt: I offer in evidence so much of the minutes of the City Council of the meeting of August 16, 1920, as shows the action of the Council on the application of the Plaintiff for a license, it being likewise under the prior ordinance.

Mr. Donworth: Same objection, Your Honor.

The Court: Sustain the objection.

Mr. Halverstadt: Let this be marked as an exhibit and show it was offered.

(Paper referred to marked Plaintiff's Exhibit "B," for identification, offered and refused.)

The Court: Those licenses are granted for one year, I take it.

Mr. Donworth: Yes, Your Honor.

The Court: If that license had been granted at that time it would have expired long before this anyway.

Mr. Halverstadt: Here is the thing I want to call your Honor's attention to. I want to show that the City Council has deliberately engaged on a plan of keeping any Japanese from securing a license in those occupations in which the City has a right to require a license and they are doing it wholly and solely because of alienage
46 of these particular Japanese, and to show further, during the whole of the time they have been granting licenses to other aliens. Not, however, under the present ordinance, but heretofore.

Mr. Donworth: In connection with that I would like to point out that the present ordinance applies to every person who is not a citizen of the United States, no matter what country he is a citizen of.

The Court: Sustained the objection.

(Witness excused.)

PHILLIP TINDALL, called as a witness in behalf of plaintiffs, was duly sworn and testified as follows:

Direct examination.

By Mr. Halverstadt:

Q. Your name is Phillip Tindall and for about two years past you have been a councilman of the City of Seattle?

A. Yes, sir.

Q. Just to refresh your recollection I will hand you that. (Plaintiff's Exhibit "B" for identification.) At the meeting of the City Council of the City of Seattle held on the 16th day of August, 1920, at which came up for adoption or rejection, a report of the License Committee of the City of Seattle recommending the granting of a pawn broker's license to R. Asakura at 526 King Street, you voted against granting the license, did you not?

Mr. Donworth: Just a minute. I object to that on the ground it is absolutely immaterial what proceedings were had by the City Council on the application of the Plaintiff under a former
47 ordinance, it has nothing whatever to do with the case.

The Court: Objection sustained.

Mr. Halverstadt: I offer to prove by this witness that he did so vote and he so voted wholly on the ground that the applicant was a subject of the Emperor of Japan.

Mr. Donworth: The same objection.

The Court: Sustain the objection.

Q. Mr. Tindall, in common parlance you are what is commonly known as the father of this present pawn broker ordinance, are you not?

Mr. Donworth: I object to that as immaterial, Your Honor. It does not make any difference whether he was the father or the mother of it.

The Court: Sustain the objection.

Q. That ordinance was passed because of the agitation which had been started in the City Council against Japanese, was it not, Mr. Tindall?

Mr. Donworth: The same objection.

The Court: Sustain the objection.

Mr. Halverstadt: I offer to prove by this witness that he fathered the ordinance in question which is now in force and effect, relating to pawn brokers' licenses, containing the provision that only citizens of the United States may have such a license; that he at all times worked in putting it through and that it was put through as a result of his efforts.

Mr. Donworth: The same objection.

Mr. Halverstadt: Just a minute. And that he put it through for the purpose of preventing Japanese from securing a license
48 to engage in the business of pawn broker, and containing the provision that no one may engage in the pawn broker business unless he did have a license granted by the City of Seattle.

Mr. Donworth: The same objection.

The Court: Sustain the objection.

Mr. Halverstadt: That is all.

(Witness excused.)

JOHN E. CARROLL, called as a witness in behalf of plaintiff, was duly sworn, and testified as follows:

Direct examination.

By Mr. Halverstadt:

Q. Your name is John E. Carroll, and for sometime past you have been a councilman of the City of Seattle?

A. It is and I am.

Q. Since when?

A. Since May, 1919.

Mr. Halverstadt: I offer to make the same proof by this witness which I offered to make by Mr. Tindall.

Mr. Donworth: The same objection.

The Court: The same ruling of the Court.

Mr. Halverstadt: That is all, Mr. Carroll.

Mr. Donworth: No cross-examination.

(Witness excused.)

49 R. ASAKURA, recalled in his own behalf, already sworn, testified as follows:

Direct examination.

By Mr. Halverstadt:

Q. You have paid to the City of Seattle the sum of \$175, the license fee required by the ordinance, have you not?

A. Yes, I have.

Mr. Halverstadt: I will state for counsel so the record will be complete, he sent a cashier's check to me, payable to Ed. Terry, City Treasurer, and I turned it over to Mr. Terry, and the amount is in the City Treasury. I think payment was made subject to the order that Your Honor made at the time you granted the temporary injunction.

Q. Mr. Asakura, are you willing to comply with any ordinance of the City of Seattle relating to pawn brokers if you can comply with it?

A. No.

Q. Listen to my question. Are you willing to comply with any ordinance of the City of Seattle relating to pawn brokers, if you can comply with it?

A. Yes.

Mr. Donworth: That is objected to as immaterial and a self-serving declaration.

The Court: Well, he has answered. I will let it stand.

Mr. Halverstadt: That is all.

Cross-examination.

By Mr. Donworth:

Q. You say you paid \$175 under the order of the
50 Court?

A. Yes, I paid; I give it to Mr. Halverstadt.

Q. While the injunction is in effect, you pay your license fee, but if the injunction should be dissolved why then you get the balance of your money back?

Mr. Halverstadt: That is a question of law for the Court.

The Court: I do not think that is material to the issues here.

(Witness excused.)

Mr. Halverstadt: I have here a carbon copy of my letter as to that if there is any dispute as to the money being paid.

Mr. Donworth: I want to reserve the point that does not give him any greater rights than he otherwise would have.

The Court: I do not think so.

Mr. Halverstadt: I am offering that for the purpose of showing that this man is doing everything he can do to comply.

The Court: Yes, he put the money in the treasury in good faith.

Mr. Halverstadt: We rest.

Plaintiff rests.

51 Mr. Donworth: The Defendant offers in evidence a certified copy of Ordinance No. 42323, which is the last pawn broker's license.

The Court: That is the new ordinance?

Mr. Donworth: Yes; the one that is called into question in this case.

Mr. Halverstadt: The Court takes judicial notice of it. I have no objection to its being admitted.

(Certified copy of ordinance admitted in evidence as Defendant's Exhibit 1.)

Mr. Donworth: The Defendants rest.

Defendants rest.

(Argument by respective counsel.)

In the Superior Court of King County

ORAL OPINION

The Court: Gentlemen, any comment this Court may make would not do any good anyway. The Court might take the matter under advisement or write some sort of a written opinion, as has been the practice of some of the Superior Courts around this building occasionally, I am informed. This Court in seventeen years has written about four or five what are called written memorandum opinions; I do not think any person has ever read them, including counsel on either side of the case, and the higher court has never read them.

However, I am of the opinion this is a proper case for injunctive relief. I feel that this ordinance is unconstitutional and ought not be permitted to stand. I am of the opinion, too, that this pawn

52 broker business is a lawful business, and while it comes under the proper regulation of police power, yet at the same time every person who is authorized either by law or by treaty to engage in business in this country has a right to an equal show. That being the case I feel that a mistake was made in this case unless there was some other reason.

My view is that a man who is an alien and is an inhabitant here has a right to engage in business—to engage in any lawful business that other citizens engage in. I will grant the injunction prayed for and you can prepare the papers and get everything in regular

order. Submit your papers to Mr. Donworth and try to agree on what you can, that is, as to form.

ORDER SETTING STATEMENT OF FACTS

[Filed Feb. 23, 1922]

STATE OF WASHINGTON.

County of King, ss.:

I, A. W. Frater, one of the Judges of the Superior Court of the State of Washington in and for King County, and sitting in Department No. 2 of said court, and the Judge before whom the above entitled cause was tried, do hereby certify:

That the matters and proceedings embodied in the foregoing statement of facts are matters and proceedings occurring in said cause, and the same are hereby made a part of the record herein.

I do further certify that the same contains all the material facts, matters and proceedings heretofore occurring in said cause, and not already a part of the record therein.

I do further certify that the foregoing statement of facts contains all of the evidence and testimony introduced upon the trial of said cause, together with all objections and exceptions made and taken to the admission or exclusion of testimony, and all motions, offers to prove and admissions, and rulings thereon; and that Plaintiff's Exhibits "A" and "B" for identification, and Defendants' Exhibit 1, hereto attached, are all the exhibits introduced upon the trial of said cause.

Done in open court this 23rd day of February A. D. 1922.

A. W. Frater, Judge.

Ent'd 5.

[File endorsement omitted.]

EVIDENCE: PLAINTIFF'S EXHIBIT A.

This application must be filed sixty days in advance—Fill all the blanks.

152,320. 14.

The City of Seattle

Plaintiff's Exhibit A for Identification Offered and Refused. Filed Dec. 22, 1921. George A. Grant, Clerk, By S. R. Battenfield, Deputy.

Petition for License as Pawn Broker

Ent'd 5

Seattle, Wash., July 14, 1920.

To the Mayor and City Council of the City of Seattle:

The Undersigned Petitioner, who h— been resident of the City of Seattle as follows: R. Asakura, for 16 year-, resigind at 1510 Sanders Ple., — — —, Pres.; — — —, Secy., whose principal place of business is No. — — — St., request- a license to operate as Pawnbroker at the following location: In front room first floor in the frame building at No. 526 King St. Doing business under the name of R. Asakura known as the "— — —." Office for the period of twelve months ending the 26 day of July, 1921.

Officers of the Incorportation, Members of Firm or Individuals Must Sign Here:
R. Asakura, Doing Business under the Name of R. Asakura, Applicant.

Money must accompany this application.

Report of License Committee

Mr. President:

We respectfully recommend that the prayer of the within petition be — granted.

Robt. B. Hesketh, Chairman; Oliver T. Erickson, Committee.

I dissent: P. Tindall.

Date reported: Aug. 16, 1920.

[Endorsed:] File No. 78238. These blanks to be filled by comptroller. Petition for Pawnbroker's License of R. Asakura at 526 King St. 7/26. Filed Jul. 14, 1920. H. W. Carroll, City Comptroller, By E. L. Marsh, Deputy. Ordinance No. —. Date — — —. License No. —. Date — — —. Fee, \$175.00, Paid Jul. 14, 1920. Treasurer's Receipt No. L3639. Renewal. Rejected Aug. 16, 1920.

55 STATE OF WASHINGTON,
County of King,
City of Seattle, ss:

I, H. W. Carroll, City Comptroller and ex-officio City Clerk of the City of Seattle, do hereby certify that the within and foregoing is a true and correct copy of File No. 78238, Petition for pawnbroker's license of R. Asakura, 526 King street, filed July 14, 1920, as the same appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed hereto the Seal of the City of Seattle this 21 day of December 1921.

H. W. Carroll, City Comptroller and ex-
Officio City Clerk of the City of Seattle,
By C. M. Scott, Deputy. (Seal.)

56 152,320

**EVIDENCE: PLAINTIFF'S EXHIBIT B FOR IDENTIFICATION OFFERED
AND REFUSED**

[Filed Dec. 22, 1921. George A. Grant, Clerk, By S. R. Battenfield,
Deputy]

Vol. 36, Folio 392.

Ent'd 15-5

Charter Session.

Be it remembered that the City Council of The City of Seattle met in the Council Chamber in the County & City Building in The City of Seattle, Washington, on this the 16th day of August, 1920, at the hour of two o'clock p. m., pursuant to the provisions of the City Charter.

President Haas in the Chair.

On roll call the following members were present: Bolton, Carroll, Erickson, Drake, Hesketh, Moore, Thomson, Tindall, Mr. President—9. Absent: None.

Whereupon the following proceedings were had:

* * * * *

Folio 397

Reports of Standing Committees and Second Reading of Bill

* * * * *

Folio 399

From License Committee

* * * * *

#78238, Petition for Pawnbroker's License, R. Asakura, 526 King Street;

#78471, Petition for Employment Agency license, S. Hosokawa, 411 Main St.;

#77438, Petition for B. or P. T. License, T. Shiba, 609 Weller Street;

#77435, Petition for B. or P. T. license, D. Yoshida, 604 King Street;

#77992, Petition for B. or P. T. License, Tom Taju, 506 6th Ave. So.;

#77434, Petition for B. or P. T. License, M. Ishida, 408 Main Street; recommends that they be granted, signed by Hesketh and Erickson; dissenting report signed by Tindall. On motion that the majority report be adopted, said motion was defeated by the following vote:

In favor: Erickson, Hesketh, Thomson, Mr. President—4.

Against: Bolton, Carroll, Drake, Moore, Tindall—5.

Thereupon Council Bills Nos. 30602, 30673, 30503, 30497, 30501 & 30498, granting foregoing licenses, were indefinitely postponed.

* * * * *

Folio 402

Thereupon the Council adjourned.

Approved, A. F. Haas, President of the City Council.

Attest: H. W. Carroll, City Comptroller and ex-Officio City Clerk.

57 STATE OF WASHINGTON,
County of King,
City of Seattle, ss:

I, H. W. Carroll, City Comptroller and ex-officio City Clerk of the City of Seattle, do hereby certify that the within and foregoing is a true and correct copy of the proceedings of the City Council of August 16th, 1920, relating to the granting of licenses to R. Asakura, 526 King Street, S. Hosokawa, 411 Main Street, T. Shiba, 609 Weller Street, D. Yoshida, 604 King Street, Tom Taju, 506 Sixth Avenue South, and M. Ishida, 408 Main Street, as the same appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed hereto the Seal of the City of Seattle this 21st day of December, 1921.

H. W. Carroll, City Comptroller and ex-Officio City Clerk of the City of Seattle,
By E. M. Street, Deputy. (Seal.)

EVIDENCE: DEFENDANTS' EXHIBIT 1

[Filed Dec. 22, 1921]

Ordinance No. 42323.

An ordinance relating to, licensing and regulating the business of pawnbroker in the City of Seattle, defining offenses, and providing penalties for the violation thereof, and repealing Ordinances numbered 14404, 27496, 33731 and all other ordinances and parts of ordinances in conflict therewith.

Be it ordained by the City of Seattle as follows:

Section 1. This entire ordinance shall be deemed an exercise of the police power of the State of Washington, and of the City of Seattle, for the protection of the public economic and social welfare, health, peace and morals, and all its provisions shall be liberally construed for the accomplishment of that purpose.

Section 2. The word "person," wherever used in this ordinance shall be held and construed to mean and include natural persons of either sex, firms, co-partnerships and corporations, whether acting by themselves or by servant, agent or employee. The singular number shall include the plural, and the masculine pronoun shall include the feminine.

Section 3. The term "pawnbroker," as used in this ordinance, shall mean and include every person whose business or occupation is to take and receive by way of pledge, pawn or exchange, goods, wares or merchandise, or any kind of personal property whatever, for the repayment or security of any money loaned thereon, or to loan money on deposit of personal property. The term "pawnshop" shall mean and include every place at which the business of pawnbroker is carried on.

Section 4. It shall be unlawful for any person to engage in business as a pawnbroker unless such person shall have a valid and subsisting license so to do, obtained in the manner herein provided.

Section 5. Any person desiring to obtain a license and engage in the business of pawnbroker in the City of Seattle, shall make application therefor to the City Council upon a form to be furnished by the City Comptroller, which shall be substantially as follows:

The City of Seattle,
Office of the City Comptroller

No. —

Application for a Pawnbroker's License

1. Name of Applicant — — —.
2. Home address (if corporation, give residence address of officers).

3. State whether individual, partnership or corporation. ____.
 4. If individual or partnership, state whether all persons sharing in the profits of the business are citizens of the United States. ____.
 5. State names of any such persons who are not citizens of the United States. ____.
 6. If a corporation, give the name of each stockholder together with the number of shares of capital stock held by each. ____.
 7. If a corporation, state whether all stockholders are citizens of the United States. ____.
 8. Give the names of any stockholders who are not such citizens. ____.
 9. If individual or partnership, state whether applicant is of legal age. ____.
 10. How long has applicant (or if a corporation, its officers) resided in the City of Seattle. ____.
 11. If individual or partnership, state present occupation. ____.
 12. Address at which business is to be carried on. ____.
 13. Do said premises comply with the requirements of city ordinances relating to buildings and health and sanitation?
 14. Has the applicant (or if a corporation, any of its officers) been convicted of felony or misdemeanor involving an intent to defraud? ____.

STATE OF WASHINGTON,
County of King, 88:

_____, being first duly sworn, upon oath deposes and says: I am the above named applicant, and make this affidavit for the purpose of obtaining from the City of Seattle a license to conduct a business of pawnbroker, as provided in Ordinance No. ___. I have personal knowledge of the matters stated in the foregoing application and the statements contained therein are true.

Subscribed and sworn to before me this — day of —, 19—
— —, Notary Public in and for the
State of Washington, residing at Seattle.

Said application shall be signed and duly verified by the applicant before an officer authorized to administer oaths.

Section 6. The City Council, upon presentation of such application and before acting upon the same, shall refer such application to the Chief of Police for a full investigation as to the truth of the statements contained therein, and as to any and all other matters which might tend to aid such City Council in determining whether or not such application should be granted.

The Chief of Police shall, within one week after any application has been referred to him, furnish a written report to the City Council containing the result of his investigation. If the City Council be satisfied that the statements contained in such application are true, that the applicant (if a corporation, the holders of a majority

of its capital stock) and all persons connected with such business are citizens of the United States and residents of the City of Seattle, of good moral character, and that the premises described in the application comply with the requirements of the ordinances of the City of Seattle relative to buildings and health and sanitation and that the same are situated in a locality in which the conducting of a pawnshop is not prohibited, the City Council shall direct the City Comptroller to issue the license applied for; Provided, however, that no such license shall be granted unless the applicant be a citizen of the United States and a resident of the City of Seattle, or, if a corporation, unless the holders of a majority of its capital stock are such citizens, and no such license shall be granted in the event that the applicant (if a corporation, any of its officers), has ever been convicted of a felony or a misdemeanor involving an intent to defraud, or in the event that such persons are not of good moral character or in the event that the premises upon which the proposed pawn-shop is to be conducted are situated in a locality in which the conducting of a pawnshop is prohibited or in the event that said premises do not comply with the requirements of the ordinances relating to buildings and health and sanitation.

Provided, further, that if the City Council shall not be satisfied that the application should be granted, then the City Council shall, upon at least three (3) days' notice to the applicant, hold a hearing upon such application, at which the applicant shall be given an opportunity to prove by competent evidence that the applicant, if a corporation, the holders of a majority of its capital stock, and all persons connected with said business are citizens of the United States and residents of the City of Seattle and are persons of good moral character, and that the premises described in the application comply with the ordinances of the City of Seattle relative to buildings and health and sanitation are situated in a locality in which the conducting of a pawnshop is not prohibited. If after such hearing the City Council shall find from a preponderance of the evidence that the foregoing facts have been established, it shall direct the City Comptroller to issue the license applied for. If after such hearing the City Council shall find that the foregoing facts have not been established by the evidence, the application shall be denied. The action of the City Council upon such hearing shall be final.

Section 7. The license fee for a pawnbroker shall be, and the same is hereby, fixed in the sum of One Hundred Seventy-five (\$175) Dollars per calendar year or for any part thereof. All such licenses shall expire on December 31st next following their issue. The City Comptroller shall not issue any such license until the applicant shall produce a receipt of the City Treasurer showing that the applicant has paid to the City the license fee herein provided for. Any license granted under the provisions of this ordinance must be kept conspicuously posted in the place of business of the person to whom it is granted. No such license shall be assignable or transferable, and shall not authorize the person named therein to engage in the business of pawnbroker at any place other than that specified therein.

Section 8. The City Council reserves unto itself the power to revoke any license under the provisions of this ordinance at any time where the same was procured by fraud or false representation of fact, or for the violation of, or failure to comply with, any of the provisions of this ordinance by the person holding such license, or any of his servants, agents or employes, while acting within the scope of their employment, or the conviction of the person holding such license of any felony or misdemeanor involving an intent to defraud, or the conviction of any of his servants, agents or employes of any felony or misdeameanor involving an intent to defraud committed while acting within the scope of their employment. At least three (3) days before revoking any license the City Council shall cause to be mailed to the holder of such license at the address at which his pawnshop is being conducted, a notice stating the time and place of hearing concerning the revocation, at which the licensee shall be entitled to be heard and introduce the testimony of witnesses. The action of the City Council relative to such revocation shall be final; provided, that whenever any person to whom a license has been granted under the provisions of this ordinance shall be convicted of violating any of the provisions thereof, such conviction shall be *prima facie* evidence of facts sufficient to warrant revocation of the license held by such person.

Section 9. It shall be the duty of every pawnbroker to maintain at his place of business a book or other permanent record in which shall be legibly written in the English language at the time of each loan, purchase or sale, a record thereof, containing:

1. The date of the transaction.
 2. The name of the person or employe conducting the same.
 3. The name, age, street and house number, and a general description of the dress, complexion, color of hair, and facial appearance of the person with whom the transaction is had.
 4. The name and street and house number of the owner of the property bought or received in pledge.
 5. The street and house number of the place from which the property bought or received in pledge was last removed.
 6. A description of the property bought or received in pledge, which, in the case of watches shall contain the name of the maker and the number of both the works and the case, and in case of jewelry shall contain a description of all letters and marks inscribed thereon.
 7. The price paid or the amount loaned.
 8. The names and street and house numbers of all persons witnessing the transaction.
 9. The number of any pawn ticket issued therefor.
- Any pawnbroker and every clerk, agent or employee of such pawnbroker who shall fail to make any entry in any material matter in his record, as required by this section, or who shall make any false entry therein, or who shall obliterate, destroy or remove from his place of business such record, shall be deemed guilty of a violation of this ordinance.

Section 10. It shall be the duty of every pawnbroker before 12 o'clock noon of every business day, to report to the Chief of Police on blank forms to be furnished by the Police Department, a full, true and correct transcript of the record at all transactions had on the preceding day. It shall also be the duty of any pawnbroker having good cause to believe any property in his possession has been previously lost or stolen, forthwith to report such fact to the Chief of Police, together with the name of the owner, if known, and the date when, and the name of the person from whom the same was received by such pawnbroker. Every pawnbroker and every clerk, agent or employee of such pawnbroker who shall fail to make such report, or shall report any material matter falsely to the Chief of Police, shall be guilty of a violation of this ordinance.

Section 11. The book provided for in Section 10 of this ordinance shall at all times be open to inspection by the mayor, city attorney, chief of police, captains, sergeants and sergeants of detectives and detectives of the Seattle Police force, and also any goods, articles or things received, purchased or left in pledge with said pawnbroker, shall at all times be open to a like inspection.

Section 12. All pawnbrokers are authorized to charge and receive interest at the rate of three (3) per cent. per month, from any loan on the security of personal property actually received in pledge, and every person who shall ask or receive a higher rate of interest or discount on any such loan, or on any actual or pretended sale or redemption of personal property, or who shall sell any property held for redemption within ninety (90) days after the period for redemption shall have expired, shall be deemed guilty of a violation of this ordinance.

Section 13. It shall be unlawful for any pawnbroker to remove any goods, articles or things purchased by him, or left with him in pledge, from his store or place of business until the expiration of ten (10) days after the same were purchased, received or left in pawn, unless the said goods, articles or things have, within the time specified, been inspected as provided in this ordinance.

Section 14. No pawnbroker, his clerk or employee, shall receive in pledge or purchase any article or thing from any person under twenty-one years of age; or from any person who is at the time intoxicated; or from any habitual drunkard; or from any person addicted to the use of narcotic drugs, or from any person who is known by him to be a thief, or an associate of a thief, or a receiver of stolen property, or from any person whom he has reason to suspect or believe to be such. The fact of loaning money upon or purchasing goods, articles or things by such pawnbroker, his clerk or employee, from any person under the age of twenty-one years; or from one who is at the time intoxicated; or from an habitual drunkard; or from any person addicted to the use of narcotic drugs, or from any one who is known by him to be a thief, or an associate of a thief, or a receiver of stolen property; or from any person whom he has reason to believe to be such shall be *prima facie* evidence of an intent on the part

of the person so loaning money upon, or purchasing, such articles or things to violate this ordinance.

Section 15. It shall be unlawful for any pawnbroker to conduct or carry on the business of pawnbroker, in whole or in part, directly or indirectly, or to open or keep open his pawnshop for the transaction of any business whatsoever therein between the hours of 7 o'clock p. m., and 7 o'clock a. m., except from December 15th, to December 25th, of each year, and on Saturdays, when pawnbrokers may remain open until, but not later than, 10 o'clock p. m.

Section 16. If any section, sub-section, sub-division, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or void, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 17. No prosecution now pending and no offense heretofore committed under ordinances heretofore enacted, shall be affected in any way by the provisions of this ordinance, but all such prosecutions shall be conducted to final judgments and all such offenses shall be prosecuted in the same manner as if this ordinance had not been enacted.

On the day after the date when this ordinance becomes effective all persons holding a pawnbroker's license issued pursuant to ordinances heretofore existing shall forthwith make application for licenses pursuant to the provisions of this ordinance, provided that such persons shall be permitted to continue doing business until the City Council has taken final action on their respective applications. If such application be finally denied by the City Council, the balance of the license fee paid by such licensee computed on the basis of the nearest calendar month for the unexpired portion of the term of such license shall be refunded. If such application be finally granted, such licensee shall be credited on the fee for his new license with the amount of such unexpired balance computed as herein provided.

Section 18. Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon the conviction thereof, shall be punished by a fine of not to exceed One Hundred (\$100) Dollars and costs, or by imprisonment in the city jail for a term not exceeding thirty (30) days, or be punished by both such fine and imprisonment.

Section 19. That Ordinance No. 14,404, entitled:

"An Ordinance to license and regulate the business of pawnbroker in the City of Seattle, providing penalties for the violation thereof, and repealing all ordinances or parts of ordinances inconsistent herewith."

approved October 24th, 1906, and Ordinance No. 27,496, entitled:

"An Ordinance amending Section 4 of Ordinance No. 14,404, entitled 'An Ordinance to license and regulate the business of pawnbroker in the City of Seattle, providing penalties for the violation thereof, and repealing all ordinances or parts of ordinances inconsistent herewith,' approved October 24, 1906, by increasing the license fee therein provided,"

approved July 3rd, 1911, and Ordinance No. 33,731, entitled:

"An Ordinance amending Section 10 of Ordinance No. 14,404, entitled 'An Ordinance to license and regulate the business of pawn-broker in the City of Seattle, providing penalties for the violation thereof, and repealing all ordinances or parts of ordinances inconsistent herewith,' approved October 24, 1906."

approved September 30th, 1914, and Ordinance No. 38,156 entitled:

"An Ordinance relating to and regulating hours for the transaction of business of pawnbrokers and secondhand dealers in the City of Seattle, providing penalties for the violation of the provisions thereof, and repealing Ordinance No. 36,584,"

approved January 30th, 1918, insofar as the same applies to pawn-shops, and all other ordinances and parts of ordinances, insofar as they may be in conflict with the provisions of this ordinance be, and the same are hereby repealed.

Section 20. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed the City Council the 31st day of May, 1921, and signed by me in open session in authentication of its passage this 31st day of May, 1921.

Wm. Hickman Moore, President Pro Tem.
of the City Council.

Approved by me this 2nd day of June, 1921.

Robt. B. Hesketh, Acting Mayor.

Filed by me this 2nd day of June, 1921.

Attest: H. W. Carroll, City Comptroller and
ex-Officio City Clerk. By E. M. Street,
Deputy Clerk. (Seal.)

Date of first publication in the Daily Journal of Commerce, Seattle,
June 7, 1921. (C-463)

60-62 STATE OF WASHINGTON,
County of King,
City of Seattle, ss:

I, H. W. Carroll, City Comptroller and ex-officio City Clerk of the City of Seattle, do hereby certify that the within and foregoing is a true and correct copy of Ordinance No. 42323, as the same appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed hereto the seal of the City of Seattle this 22 day of December 1921.

H. W. Carroll, City Comptroller and ex-
Officio City Clerk of the City of Seattle,
By C. M. Scott, Deputy. (Seal.)

63 In the Superior Court of the State of Washington for King County

[Title omitted.]

ANSWER

[Filed Aug. 3, 1921.]

Come now the above named defendants and answering the complaint herein deny, admit and allege as follows:

I. Answering paragraph IV of said complaint, the defendants are without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore deny the same.

II. Answering Paragraph VI of said complaint, the defendants are without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore deny the same.

III. Answering Paragraph VIII of said complaint, the defendants deny each and every allegation therein contained.

IV. Answering Paragraph IX of said complaint, the defendants deny each and every allegation therein contained, except that it is admitted that the plaintiff has not applied to The City of Seattle for a license to engage in business as a pawnbroker, as required by the terms of Ordinance No. 42323.

V. Answering Paragraph XI of said complaint, the defendants deny each and every material allegation therein contained.

VI. Answering Paragraph XIII of said complaint, the defendants deny each and every allegation therein contained.

VII. Answering paragraph XIV of said complaint, the defendants deny each and every allegation therein contained.

VIII. Answering Paragraph XV of said complaint, the defendants deny each and every allegation therein contained.

64 IX. Answering Paragraph XVI of said complaint, the defendants deny each and every allegation therein contained.

X. Answering Paragraph XVII of said complaint, the defendants deny each and every allegation therein contained, except that it is admitted that the defendant Comptroller intends to arrest all persons who, to his knowledge, are engaging in the business as a pawnbroker without having a valid and subsisting license therefor, as required by Ordinance No. 42323.

XI. Answering Paragraph XVIII of said complaint, the defendants deny each and every allegation therein contained.

XII. Answering Paragraph XIX of said complaint, the defendants have no knowledge or information sufficient to form a belief as to the allegations therein contained, and therefore deny the same.

Wherefore defendants, having fully answered the complaint of the plaintiff, pray that the above-entitled action be dismissed and that they recover of the plaintiff their costs and disbursements herein.

Walter F. Meier, Corporation Counsel;

Thomas J. L. Kennedy, Assistant;

Charles T. Donworth, Assistant; Attorneys for Defendants.

STATE OF WASHINGTON,
County of King, ss:

_____, being first duly sworn, on oath says: That he is Mayor of the City of Seattle, one of the defendants named in the foregoing Answer; that he has heard the same read, knows the contents thereof and believes the same to be true.

HUGH M. CALDWELL.

Subscribed and sworn to before me this 2nd day of August, 1921.

H. F. Jones, Notary Public in and for the
 State of Washington, Residing at
 Seattle, Washington.

Copy of the within — received and due service thereof acknowledged this 2d day of Aug., 1921.

Piles & Halverstadt, Attorneys for Plff.
 J. H.

[File endorsement omitted.]

65 In the Superior Court of the State of Washington for King County

[Title omitted]

DECREE

[Filed Dec. 28, 1921]

This cause came on for trial before the Court without a jury on the 22nd day of December, 1921, the plaintiff appearing in person and by Messrs. Guie & Halverstadt, his attorneys, the defendants appearing by Walter F. Meier, Corporation Counsel, and Charles T. Donworth, Assistant and testimony and evidence on behalf of the parties having been offered and received by the court, and the Court being fully advised in the premises;

It is ordered, adjudged and decreed That Section 6 of Ordinance No. 42323 of the City of Seattle, entitled:

"An ordinance relating to licensing and regulating the business of Pawnbroker in the City of Seattle, defining offenses, and providing penalties for the violation thereof, and repealing Ordinances numbered 14404, 27496, 33731 and all other ordinances and parts of ordinances in conflict therewith,"

passed by the City Council on May 31st, 1921, approved by the Mayor of said City on June 2nd, 1921, so far as the same makes United States citizenship a prerequisite to obtaining a license to engage in business as a pawnbroker, is in contravention of Sections 3 and 12, of Article I of the Constitution of the State of Washington, and Section I, of the Fourteenth Amendment to the Constitution of the

United States, in that it deprives the plaintiff of his property without due process of law, and denies to the plaintiff the equal protection of the laws, and is void and of no effect.

It is further ordered, adjudged, and decreed that the defendants above-named, and each of them, and their and each of their agents, servants and employees, be and are hereby perpetually enjoined and restrained from enforcing or attempting to enforce against the plaintiff, the provisions of Section 6 of said Ordinance No. 42323 specified in the last-preceding paragraph hereof, or in any way interfering with the plaintiff in the conduct of his business as a pawnbroker by reason of said provisions of Section 6 of said ordinance until such time as the City of Seattle shall grant him a license to conduct business as a pawnbroker upon his complying with the other provisions of said ordinance.

It is further ordered, adjudged and decreed that the plaintiff have and recover of and from the defendants their costs and disbursements herein to be taxed.

Done in open court this 28th day of December, 1921.

A. W. Frater, Judge.

Judgment Number 64670. Entered in Execution Docket Vol. 64, page 284.

[File endorsement omitted.]

67 In the Superior Court of the State of Washington for King County

[Title omitted]

NOTICE OF APPEAL

[Filed Dec. 30, 1921]

To R. Asakura, the above-named plaintiff, and Messrs Guie & Halverstadt, his attorneys of record:

You and each of you are hereby required to take notice that the above-named defendants, and each of them, deeming themselves aggrieved thereby, hereby appeal to the Supreme Court of the State of Washington from that certain decree and final judgment entered herein on the 28th day of December, 1921, by the Honorable A. W. Frater, one of the judges of the above-entitled Court, granting the plaintiff a permanent injunction, and from each and every part of said decree and judgment.

Dated at Seattle, Washington, this 30th day of December, 1921.

Walter F. Meier, Corporation Counsel;
 Thomas J. L. Kennedy, Assistant;
 Charles T. Donworth, Assistant, Attorneys for Defendants.

Copy of the within Notice received and due service thereof acknowledged this 30 day of December, 1921.

Guie & Halverstadt.

[File endorsement omitted.]

68

CLERK'S CERTIFICATE

STATE OF WASHINGTON,
County of King, ss:

I, George A. Grant, County Clerk of King County and ex-officio Clerk of the Superior Court of the State of Washington in and for King County, do hereby certify that the foregoing is a full, true and correct transcript of so much of the record and files in cause No. 13 23 20, entitled R. Asakura vs. The City of Seattle, a municipal corporation et al., as I have been directed by the Appellants to transmit to the Supreme Court of the State of Washington as a Supplemental Transcript of the record on appeal in said Cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court this 25 day of February, 1922.

George A. Grant, County Clerk, &c., By R.
W. Flemming, Deputy. (Seal of Superior Court of King County.)

69 In the Supreme Court of the State of Washington, Department Two

[Title omitted]

OPINION

[Filed October 24th, 1922]

Has a city the power to provide by ordinance that everyone engaging in pawnbroking must be a citizen of the United States?

The answer to this question determines this litigation, which is an action begun by a subject of the Emperor of Japan seeking to enjoin the city of Seattle from arresting the respondent for pawnbroking.

An ordinance was enacted by the proper city authorities in July, 1921, providing for the licensing and regulating of the business of pawnbroking. One of the sections of this ordinance provides that no one shall engage in pawnbroking without a license. Another section specifies "that no such license shall be granted unless the applicant be a citizen of the United States" etc.

Respondent's complaint alleges that he is a Japanese subject, and has resided in Seattle for six years prior to July, 1921; that during such time he has been a pawnbroker, and alleges that the ordinance hereinabove referred to is invalid as being in violation of the provisions of section 3 of article I of the State constitution, and section I of the 14th Amendment to the Constitution of the United

States, and in conflict with the treaty between the governments of the United States and Japan.

A decree was entered in conformity with the prayer of respondent's complaint, from which the city has appealed.

At the threshold we are met with the necessity of determining whether pawnbroking is a business in which any individual 70 has an inherent right to engage. If it is such then, of course, the respondent is entitled to the remedy he seeks. Or is pawnbroking a privilege which may be absolutely denied to any one or granted upon such terms and conditions and with such restrictions as the city may impose?

Certain lines of business activity have been from earliest times considered by the courts to contain elements which permit the restriction of those who may engage therein. Some of these elements have been the interference with the lives and property of the people generally, and the jeopardy of the public health, safety and morals. The courts have held that no one has an inherent right to pursue such traffic but that such activities may be permitted under such conditions as the sovereign exercising the police power may declare, and that the person enjoying such permission is exercising a privilege and not a right. Without hesitation, the courts have designated certain businesses as falling within the class of privileges. The elements will not differ in many of these occupations, and where they plainly may impair the public health, morals or safety, courts will be found unanimously upholding the placing of restrictions upon the class and character of persons who may be allowed to transact such businesses. Pawnbroking has not so often come before the courts for consideration, but we find that decisions conform to what is the general understanding of men in holding that pawnbroking is a business which is surrounded with some degree of menace to the public good. In certain of its aspects, pawnbroking may be harmless, but, on the other hand, it is common knowledge that both on account of the nature of the business itself and somewhat on account of the character of those who engage in it, it offers a ready shelter for thievery, and to that extent encourages criminality. This aspect of the business has been recognised by both our State and city governments for statutes and ordinances will be found which attempt to strictly regulate the manner in which pawnbroking may be conducted, and providing, among other things, for a constant and careful police inspection and control. So that where the question as to the character of pawnbroking has arisen we find the courts deciding that to be allowed to engage therein is a privilege and not an inherent right.

Probably as good an expression of this view as any is to be 71 found in the case of *Grand Rapids v. Braudy*, 64 N. W. 29, where the supreme court of Michigan says:

"It is common knowledge that thieves resort to these places (pawn-brokers) to dispose of their stolen goods, and that unscrupulous, and oftentimes criminal, persons are engaged in the business. The business therefore comes expressly within the control of the police power of the State, and is properly subject to reasonable rules and regula-

tions. A very clear abuse of this power must be shown in order to justify the court in declaring the regulations to be unreasonable and void. While this business is legitimate in the absence of any statute controlling it, no inalienable right exists to carry it on without complying with those provisions and restrictions which the legislative power of the State has seen fit to require. * * * The business is not necessary to the welfare of society or the public. The common council, with the knowledge of all the facts before them to a greater extent than courts can possibly have, have determined that it is well in their judgment to require these conditions. While the exercise of any arbitrary power may seem harsh, still we are of the opinion that this requirement is not so unreasonable as to require the courts to declare it void."

Similar language is used by the supreme court of Virginia in *Elsner Bros. v. Hawkins*, 73 S. E. 479, as well as by the supreme court of California in *Levison v. Boas*, 88 Pac. 825, and in *St. Joseph v. Levin*, 31 S. W. 101, the supreme court of Missouri said:

"The city may not only regulate but suppress pawnbrokers or refuse to license such occupation altogether. No person has the right to follow such occupation within the limits of said city without first obtaining a license from its authorities for that purpose which may be granted or withheld at pleasure. The business is a privilege, not a right, and he who avails himself of it and derives its benefits must bear its burdens and conform to the laws in force regulating the occupation if not illegal."

The supreme court of this State in *Seattle v. Barto*, 31 Wash. 141, says this:

"It is not doubted that the business of pawnbroking is a proper subject of police regulation, nor is it doubted that it is within the province of the municipal authorities to make the business bear the costs of such regulation."

The supreme court of Indiana, in *Grossman v. Indianapolis*, 88 N. E. 945, and the supreme court of Missouri in *St. Louis v. Baskowitz*, 201 S. W. 870, in dealing with the conduct of junk shops (a business which in some aspects closely resembles that of pawnbroking) held similarly to the cases above cited.

Holding, then, that pawnbroking is a privilege and not a right, the question arises as to whether this privilege in the form of a license

72 may be granted to citizens and refused to aliens. This question has also been before numerous courts, which have held that such distinction may properly be made for the reason that, being a privilege, it is liable to abuse, resulting in public harm, and may therefore properly be confined to such persons as may reasonably be supposed to have a full sense of responsibility to the country and a desire for its welfare, and persons who are attached to the principles of the government and well disposed to its good order and happiness. The legislative department of the government

having determined this matter, the courts will not interfere with its conclusions. This question has sometimes arisen in the control of the liquor traffic, wherein that activity has been confined to citizens of the United States. *Bloomfield v. State* 99 N. E. 309; *Tragester v. Gray*, 20 Atl. 905. The rule has also been applied in ordinances regulating peddling. *Commonwealth v. Hana*, 81 N. E. 149. Granting the privilege of laboring upon public works. *People v. Crane*, 198 N. E. 427; *Crane v. New York*, 239 U. S. 195, and the right to operate motor vehicles on public streets. *Morin v. Nunan*, 103 Atl. 378. The supreme court of this State in *State v. Ames*, 47 Wash. 328 has held that the privilege of pilotage in the waters of the State could properly be limited to citizens.

This court, in the case of *State ex rel. Sales v. Seattle*, 20 Wash. Dec. 62, has established the rule that a municipality could prohibit any business which was inherently vicious and harmful, and in effect has said that in cases where the business is of such character the city can say who shall and who shall not engage in it.

The case of *Yick Wo v. Hopkins*, 118 U. S. 358 (commonly known as the Chinese Laundry Case) was one involving the attempt by the city to regulate a business which was not of itself harmful or injurious, and is on that account distinguishable from the case at bar and is therefore of no controlling significance.

We find nothing therefore in the ordinance in conflict with federal or state constitutions.

Having determined these questions, there is presented the one as to whether the ordinance is in conflict with the treaty between the governments of the United States and Japan, proclaimed

73 April 5, 1911. Passing the question of whether a treaty making power can impair or destroy the police power of a sovereign state, we are content to rest our decision on this phase of the case upon the language of the treaty itself, which guarantees only to the subject of Japan residing in the United States the right to "carry on trade" upon the same terms as our own citizens. The business of pawnbroking cannot be held to be a right to "carry on trade". The Supreme Court of the United States, in *Patsone v. Pennsylvania*, 232 U. S. 138 and *Heim v. McCall*, 239 U. S. 175 has held that equality of rights provisions in treaties do not include the privilege of game hunting or laboring on public works. So equality of opportunity to "trade" means only the pursuit of those callings in which an individual has an inherent right to engage. The treaty does not secure to an alien the right to exercise a privilege.

Pawnbroking being a business that the state in the exercise of its police power, and the city through its delegated right, may either absolutely prohibit or conditionally permit by means of a license, and the fact of alienship has been deemed sufficient ground for the refusal of a license, the courts will not sit in review of the action of the municipality, and will not reverse the action of the municipality in the absence of unreasonableness akin to fraud; for municipal corporations are *prima facie* the sole judges respecting the reasonableness of such regulations and only in extreme cases will the courts interfere with the exercise of their judgment.

The action should have been dismissed, and the judgment of the lower court is reversed.

Mackintosh, J.

We concur: Parker, C. J. Holcomb, J. Main, J. Hovey, J.

74 In the Supreme Court of the State of Washington, Friday,
Nov. 24th, 1922

[Title omitted]

JUDGMENT

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of King County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 24th day of November, A. D. 1922, on motion of Walter F. Meier, Esquire, of counsel for appellants, considered, adjudged and decreed that the judgment of the said Superior Court be, and the same is, hereby reversed with costs; and that the said The City of Seattle et al. have and recover of and from the said R. Asakura the costs of this action taxed and allowed at Ninety-two & 95/100 Dollars, and that execution issue therefor. And is is further ordered, that this cause be remitted to the said Superior Court for further proceedings in accordance herewith.

75 In the Supreme Court of the State of Washington

[Title omitted]

PETITION FOR WRIT OF ERROR

[Filed in Supreme Court of Washington Nov. 24, 1922]

Comes now R. Asakura, respondent above named, and says:

That on the 24th day of October, 1922, judgment in this cause was entered by this court against R. Asakura, respondent, which said judgment reversed a judgment of the Superior Court of the State of Washington, for King County, entered in said cause on the 28th day of December, 1921. That said judgment in this Court has become final.

That the said R. Asakura was and is aggrieved in that in said judgment and the proceedings prior thereto in this Court and cause, certain errors were committed to his prejudice.

This court is the highest court of this State in which a decision in this action could be had. In said action, rights, privileges and immunities were claimed by this respondent under the constitution of the United States and under authority exercised under the United States, and under the Treaty between the United States and the

Empire of Japan, and the decision of this Court was against the said rights, privileges and immunities especially set up and claimed under said constitution, authority and Treaty, all of which will more fully appear in detail from the assignment of errors filed herewith.

Wherefore said R. Asakura prays that a writ of error may issue to the Supreme Court of the State of Washington for the correcting of errors complained of and that a duly authenticated transcript of the record, proceedings and papers herein may be sent to the
76 Supreme Court of the United States.

E. Heister Guie, Dallas V. Halverstadt, Attorneys for said R. Asakura.

77 In the Supreme Court of the State of Washington

[Title omitted]

ASSIGNMENT OF ERRORS ON WRIT OF ERROR TO STATE COURT

[Filed in Supreme Court of Washington Nov. 24, 1922]

Comes now the plaintiff in error in the above entitled cause, and avers and shows that in the record and proceedings in said cause the Supreme Court of the State of Washington erred to the grieved injury and wrong of this plaintiff in error and to the prejudice and against the rights of the plaintiff in error herein in the following particulars, to-wit:

I

The Court erred in dismissing the action.

II

The said Supreme Court erred in holding that Ordinance No. 42323 of the City of Seattle, entitled:

"An ordinance relating to, licensing and regulating the business of pawn broker in the City of Seattle, defining offenses, and providing penalties for the violation thereof, and repealing Ordinances Nos. 14404, 27496, 33731 and all other ordinances and parts of Ordinances in conflict herewith,"

passed by the City Council of the City of Seattle on the 31st day of May, 1921, and approved by the Mayor of said City on the 2nd day of June, 1921, does not take the property of the plaintiff in error without due process of law.

III

The Court erred in holding that Ordinance No. 42323 of the City of Seattle, entitled:

78 "An ordinance relating to, licensing and regulating the business of pawn broker in the City of Seattle, defining offenses, and providing penalties for the violation thereof, and repealing Ordinance Nos. 14404, 27496, 33731 and all other Ordinances and parts of Ordinances in conflict therewith,"

passed by the City Council of the City of Seattle on the 31st day of May, 1921, and approved by the Mayor of said City on the 2nd day of June, 1921, is not in violation of Section I of the Fourteenth Amendment to the Constitution of the United States, and does not deny to the plaintiff in error the equal protection of the law.

IV

The said Supreme Court erred in holding that Ordinance No. 42323 of the City of Seattle, entitled:

"An ordinance relating to, licensing and regulating the business of pawn broker in the City of Seattle, defining offenses, and providing penalties for the violation thereof, and repealing Ordinances Nos. 14404, 27496, 33732 and all other ordinances and parts of Ordinances in conflict therewith,"

passed by the City Council of the City of Seattle on the 31st day of May, 1921, and approved by the Mayor of said City on the 2nd day of June 1921, is not in conflict with the Treaty existing between the United States of America and the Empire of Japan.

V

The said Supreme Court erred in not affirming the judgment of the Superior Court of the State of Washington for King County in said cause.

Wherefore, for these and other manifest errors appearing in the record, the said R. Asakura, plaintiff in error, prays that the judgment of the Supreme Court of the State of Washington be reversed and set aside and held for naught, and that judgment be rendered for plaintiff in error herein, granting him his rights under the constitution of the United States, and the Treaty between the Empire of Japan and the United States of America.

E. Heister Guie, Dallas V. Halverstadt, Attorneys for Plaintiff in Error.

79 In the Supreme Court of the State of Washington

[Title omitted]

ORDER GRANTING WRIT OF ERROR

[Filed in Supreme Court of Washington Nov. 24, 1922]

Now, on this 24th day of November, 1922, on hearing read the petition of R. Asakura, the plaintiff in error, in the above entitled action, praying for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Washington, and it appearing from said petition and the record in the above entitled case that said case is a proper case for the allowance of said writ; Now, therefore,

It is ordered, by the undersigned, the Chief Justice of the Supreme Court of the State of Washington, that said writ be, and the same is hereby allowed, and that the said R. Asakura execute to the defendants in error in said cause his bond, with surety thereon to be approved by the undersigned, in the sum of \$1,000.00, conditioned according to law, and that said bond when executed and approved by the undersigned shall operate as a supersedeas bond in said action, and thereupon all further proceedings upon the judgment rendered by this Court in said action shall be stayed pending the hearing and determination of said writ of error by the Supreme Court of the United States.

Done in open Court this 24th day of November, 1922.

Emmett N. Parker, Chief Justice of the Supreme Court of the State of Washington.

80 & 81 In the Supreme Court of the State of Washington

[Title omitted]

BOND OF R. ASAKURA FOR \$1,000 APPROVED BY PARKER, J.

[Filed in Supreme Court of Washington Dec. 1, 1922. C. S. Reinhardt, Clerk. F. S. G.]

[Omitted in printing]

82 In the Supreme Court of the State of Washington

[Title omitted]

STIPULATION

Whereas, the respondent has been granted a temporary injunction herein by the Superior Court for King County, and the appellants have appealed from the order granting said temporary injunction

and have filed a transcript of record and statement of facts in connection with said appeal; and

Whereas, it is the intention of the parties hereto that an appeal shall be taken from the final decree to be entered herein after trial upon the merits and that, if possible, said appeal will be submitted at the January, 1922 session of the Supreme Court; Therefore,

It is hereby stipulated between the parties hereto that the time for serving and filing appellants' brief upon the appeal now pending herein be, and the same is hereby, extended until sixty (60) days after the entry of a final decree by said Superior Court in this cause.

The object of this stipulation is to permit both appeals to be submitted and considered by the Supreme Court upon one argument and one set of briefs.

Dated at Seattle, Washington this 28th day of October, 1921.

Guie & Halverstadt, Attorneys of Record for Plaintiff and Respondent. Walter F. Meier, Corporation Counsel; Thomas J. L. Kennedy, Assistant; Charles T. Donworth, Assistant, Attorneys of Record for Defendants and Appellants.

84

[File endorsement omitted]

WRIT OF ERROR

[Filed Dec. 5, 1922]

UNITED STATES OF AMERICA, *ss.*:

The President of the United States to the honorable the Justices of the Supreme Court of the State of Washington, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the Supreme Court of the State of Washington before you, at the May term, 1922, thereof, being the highest Court of law or equity of said State in which a decision could be had in said suit between the plaintiff in error R. Asakura, designated as plaintiff and respondent, and The City of Seattle, a municipal corporation, Harry W. Carroll, as Comptroller thereof, and William H. Searing as Chief of Police thereof, designated as defendants and appellants, wherein rights, are claimed under the Constitution of the United States, and under the Treaty between the United States and the Empire of Japan, and the decision was against the rights specially set up and claimed under said Constitution and Treaty, a manifest error hath happened to the great damage of the said R. Asakura, as by his complaint appears.

We, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that

then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within sixty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what is right, and according to the laws and customs of the United States should be done.

85 Witness the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States this 1st day of December, in the year of Our Lord One Thousand Nine Hundred and Twenty-Two.

Done in the City of Seattle and County of King, with the seal of the District Court of the United States for the Western District of Washington attached.

F. M. Harshberger, Clerk of the District Court of the United States for the Western District of Washington. (Seal of the United States District Court, Western District of Washington.)

Allowed by

Emmett N. Parker, Chief Justice of the Supreme Court of the State of Washington.

86 CITATION AND SERVICE

No. 16910

UNITED STATES OF AMERICA, *ss.*:

The President of the United States to the City of Seattle, a municipal corporation; Harry W. Carroll, as Comptroller thereof, and William H. Searing, as Chief of Police thereof, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, in the District of Columbia, within sixty (60) days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Washington, wherein R. Asakura is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Washington this 1st day of December 1922.

Emmett N. Parker, Chief Justice of the Supreme Court of the State of Washington.

Service of the above Citation and receipt of copy thereof is hereby acknowledged this 6th day of December, 1922.

Walter F. Meier, Corporation Counsel;
Thomas J. L. Kennedy, Assistant;
Charles T. Donworth, Assistant, Attorneys for Defendants in Error.

87 In the Supreme Court of the State of Washington

[Title omitted]

ACKNOWLEDGMENT OF SERVICE

[Filed Dec. 6, 1922]

We hereby acknowledge service of the Petition for Writ of Error, Assignment of Errors, Order granting Writ of Error, Bond, Writ of Error, Citation and praecipe for record on appeal, together with copies thereof this 4th day of December, 1922.

Copy of within received Dec. 4, 1922.

Walter F. Meier, Corporation Counsel, Attorney for Defendants in Error.

[File endorsement omitted.]

88 In the Supreme Court of the State of Washington

[Title omitted]

CLERK'S CERTIFICATE

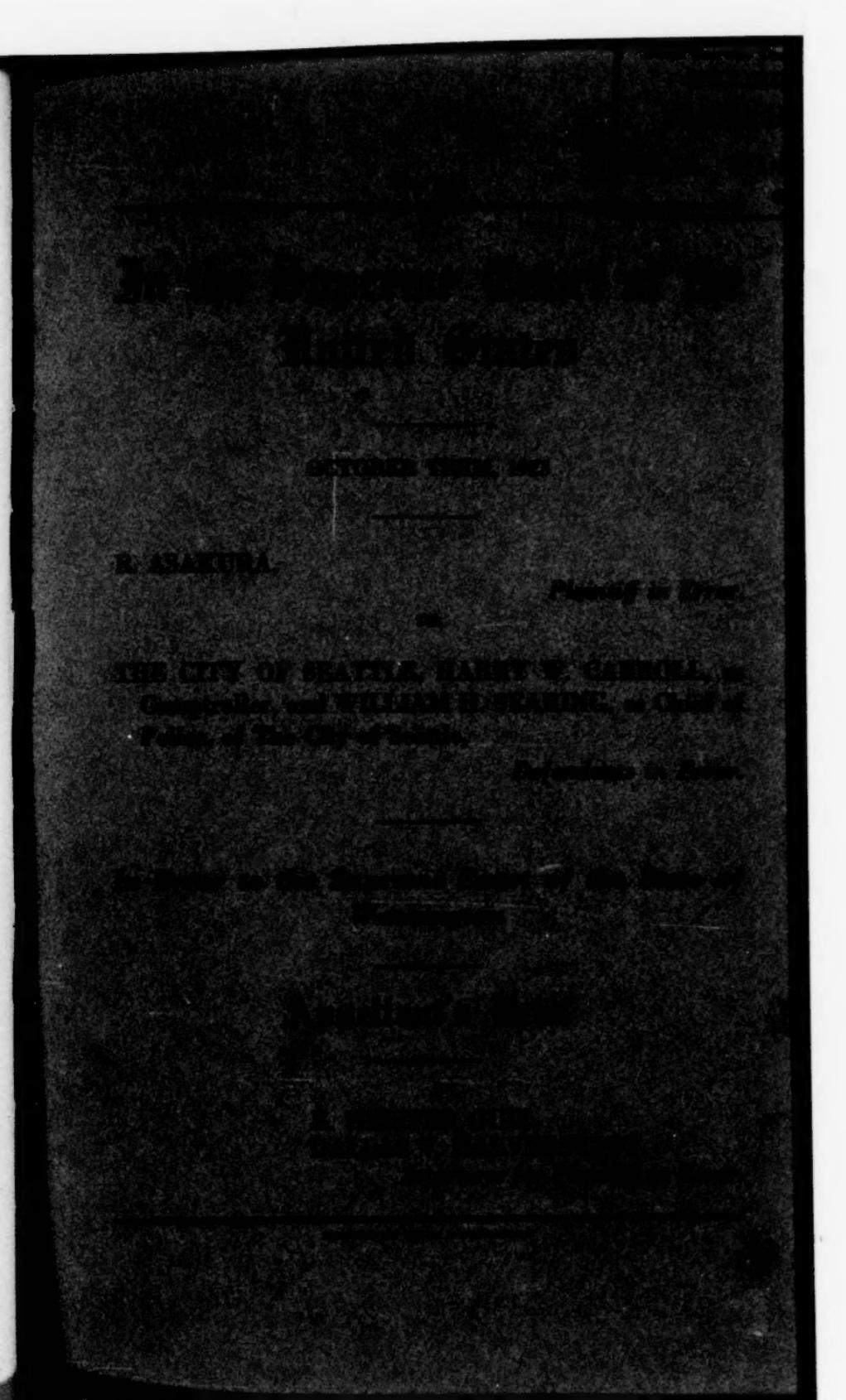
I, C. S. Reinhart, Clerk of the Supreme Court of the State of Washington, hereby certify that the above and foregoing is a full, true and correct transcript of the record in the above entitled cause and filed in pursuance of the writ of error heretofore filed in said cause and I now transmit the said transcript, together with the original writ of error and the original citation, to the Supreme Court of the United States.

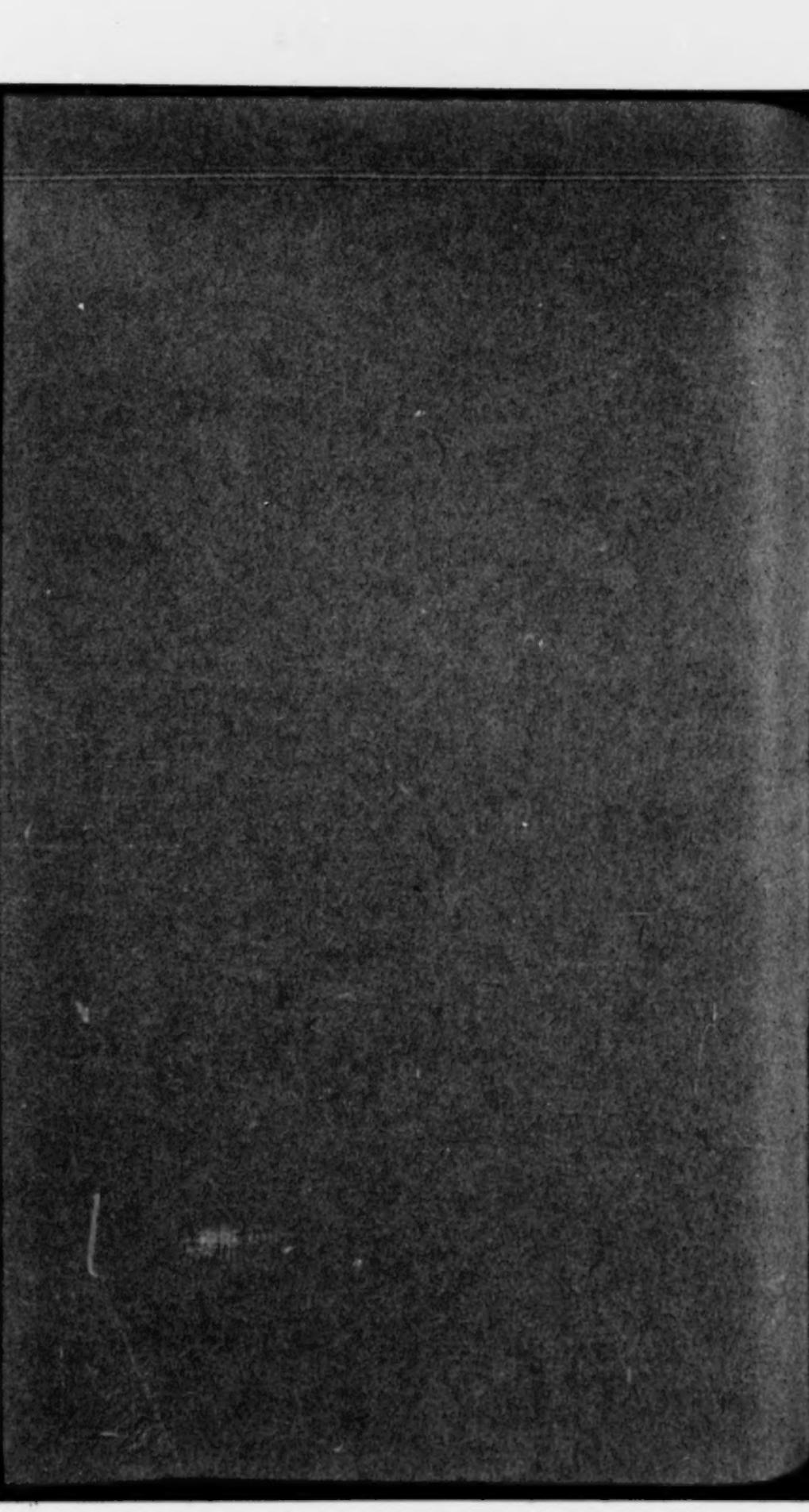
In testimony whereof, I hereunto set my hand and affix the Seal of said Court, this 23d day of January, 1923.

C. S. Reinhart, Clerk. (Seal of Supreme Court of the State of Washington).

Endorsed on cover: File No. 29,375. Washington Supreme Court. Term No. 211. R. Asakura, plaintiff in error, vs. City of Seattle, Harry W. Carroll, comptroller, and William H. Searing, chief of police, of the city of Seattle. Filed February 1st, 1923. File No. 29,375.

(9350)





In the Supreme Court of the United States

OCTOBER TERM, 1923

R. ASAKURA,

Plaintiff in Error,

vs.

THE CITY OF SEATTLE, HARRY W. CARROLL, as
Comptroller, and WILLIAM H. SEARING, as Chief of
Police, of The City of Seattle,

Defendants in Error.

*In Error to the Supreme Court of the State of
Washington*

Appellant's Brief

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INDEX

	Page
STATEMENT	1, 10
The Bill of Complaint	4, 7
The Temporary Restraining Order and Temporary Injunction	8
The Ordinance	8
The Answer	8, 9
The Trial	9, 10
Propositions Discussed	11
Assignments of Error	10
 ARGUMENT:	
Point 1. A business, occupation or calling cannot be prohibited by a state legislature unless there is inherent in the business, occupation or calling, itself, irrespective of the character of some men who may engage in it, some evil or direct tendency to evil	11
Point 2. The business of a pawnbroker is lawful and the legislature cannot prohibit any honest man from engaging therein	26
Point 3. The City cannot decline to grant a license to the plaintiff in error merely because he is a subject of the Emperor of Japan	<i>not</i> 36
Point 4. The Treaty does not permit of the refusal of the City to grant the plaintiff in error the license in question	57
 CASES AND AUTHORITIES CITED:	
Adams v. Tanner, 244 U. S. 590	13, 23, 24, 35
Ah Chong, re 6 Sawy. 45	48
Ah Fong, re 3 Sawy. 144.	37
Ah Kow v. Neenan, 5 Sawy. 552	37
Allegeyer v. Louisiana, 165 U. S. 578	56
American Sugar Refining Co. v. Louisiana, 179 U. S. 694	37, 38, 55
Atkin v. Kansas, 191 U. S. 207	36
Austin v. Tennessee, 179 U. S. 342	16
Bailey v. Baker Ice Machine Co., 239 U. S. 272	45
Barbier v. Connolly, 113 U. S. 27	40, 56
Brazeo v. Michigan, 141 U. S. 340	13, 35
Buchanan v. Warley, 245 U. S. 60	37
Butte v. Paltrovich, 39 Mont. 18	31
Cargill Company v. Minnesota, 180 U. S. 452	13
Champion v. Ames, 188 U. S. 321	16
Chirac v. Chirac, 2 Wheat. 259	36
Clark Distilling Co. v. Western Maryland R. Co., 242 U. S. 311	21
Clarke v. Clarke, 178 U. S. 186	36
Cohen v. Virginia, 6 Wheat. 264	45
Commonwealth v. Cosick, 36 Pa. Co. Ct. Rep. 637	50
Commonwealth v. Titcomb, 229 Mass. 14	43

Coppage v. Kansas, 236 U. S. 1.....	56
County of San Mateo v. Southern Pacific Ry. Co., 15 Fed. 722....	50
Cummings v. Missouri, 4 Wall. 327.....	46
Cready v. Virginia, 94 U. S. 391.....	36
Crowley v. Christensen, 137 U. S. 86.....	14
De Geofry v. Riggs, 133 U. S. 258.....	59, 60
De Vaughn v. Hutchinson, 165 U. S. 565.....	36
Elmer Bros. v. Hopkins, 113 Va. 47.....	32
Fong Yue King v. United States, 149 U. S. 698.....	37
Geer v. Connecticut, 161 U. S. 519.....	47
Grand Rapids v. Brawdy, 105 Mich. 670.....	31
Grossman v. Indianapolis, 173 Ind. 157.....	32
Hauenstein v. Lynham, 100 U. S. 483.....	36, 58
Heim v. McCall, 239 U. S. 173.....	36
Huntworth v. Tanner, 87 Wash. 670.....	24
Lee Sing, re 45 Fed. 359.....	40
Levinson v. Boas, 150 Cal. 185.....	32
Louisiana v. Ippozivitch, 49 La. 366.....	30
McCravy v. United States, 195 U. S. 27.....	19
McCready v. Virginia, 94 U. S. 391.....	36, 47
McKnight v. Hodge, 55 Wash. 289.....	37
Manchester v. Massachusetts, 139 U. S. 240.....	17
Moore Int. Law, Vol. 4, Sec. 552.....	61
Moore Int. Law, Vol. 4, page 113.....	63
Moore Int. Law, Vol. 4, Sec. 555.....	63
Moore Int. Law, Vol 6, page 702.....	65
Mulger v. Kansas, 123 U. S. 623.....	14
Murphy v. California, 225 U. S. 623.....	19
Opinion Justices, re 207 Mass. 14.....	37, 40
Otis & Gassman v. Parker, 187 U. S. 606.....	18
Patsone v. Pennsylvania, 232 U. S. 138.....	36, 47
Payne v. Kansas, 248 U. S. 112.....	35
Phelan v. Virginia, 8 How. 163.....	13
Poon v. Miller, 234 S. W. 573.....	51
Powell v. Pennsylvania, 127 U. S. 678.....	40, 56
Quong Wing v. Kirkendall, 223 U. S. 59.....	53
Raich v. Truax, 219 Fed. 273.....	50
Rast v. Van Demon, 240 U. S. 342.....	20
Rev. Stat. U. S. Sec. 4362.....	54
Reinman v. Little Rock, 237 U. S. 171.....	45
Remington's Compiled Statutes, Sec. 8966 Subd. 33 Secs. 2481-2488	29
Schooner Nymph, re 1 Sumn. 517.....	68
Selz, ex rel v. Heslerberg, 211 U. S. 31.....	17
Smith v. Cooley, 65 Cal. 46.....	69
Spokane v. Macho, 51 Wash. 322.....	35

Spottswood v. Morris, 12 Ida.	360	70
State ex rel Denny v. Bridges, 19 Wash.	44	70
State ex rel Constantine v. Darwin, 102 Wash.	402	53
State v. Phipps, 50 Kan.	609	69
State v. Bowen & Co., 86 Wash.	23	34
State v. Rossman, 93 Wash.	530	24
State v. Montgomery, 94 Me.	192	37, 39
State v. Savage, 96 Ore.	53	51
State v. North, 160 N. C.	1010	69
State v. Teigami.		70
Takai Maru, re 190 Fed.	45	50
Tanner v. Little, 240 U. S.	368	21
Templar v. Board, 131 Mich.	254	37, 40
Terrace v. Thompson, dec. Nov. 12, 1923.		36, 56
Tiburcio Parott, re 1 Fed.	481	37, 40
Tragesser v. Gray, 73 Md.	251	50
Truax v. Raich, 239 U. S.	33	37, 39, 56
Tucker v. Alexandroff, 183 U. S.	424	60
U. S. Stat. at Large, pp. 1504-1509.		57
United States v. Balsara, 180 Fed.	694	50
United States v. Wong Kim Ark, 169 U. S.	649	37, 44, 45
Vattel's Law of Nations, p.	284	60
Virginia, Ex parte, 100 U. S.	339	37
Whitfield v. Hanges, 222 Fed.	745	44
Wilson v. New, 243 U. S.	322	22
Wong Wing v. United States, 163 U. S.	228	37
Wood v. Krepps, 168 Cal.	382	32
Yick Wo v. Hopkins, 118 U. S.	336	36, 37, 40, 44, 53, 56



In the Supreme Court of the United States

OCTOBER TERM, 1923

R. ASAKURA,

Plaintiff in Error,
vs.

THE CITY OF SEATTLE, HARRY W. CARROLL, as
Comptroller, and WILLIAM H. SEARING, as Chief of
Police, of The City of Seattle,

Defendants in Error.

***In Error to the Supreme Court of the State of
Washington***

Appellant's Brief

STATEMENT OF THE CASE

This is a writ of error to the Supreme Court of the State of Washington to review a judgment of that court which reversed a decree of the Superior Court of King County, Washington, perpetually restraining the defendants from enforcing Ordinance

No. 42323, requiring all persons engaging in business as pawnbrokers to secure a license from the city so to do, and as a condition precedent, and providing that no license should be granted to anyone not a citizen of the United States, the plaintiff in error contending that the ordinance is unconstitutional and in violation of the Treaty between the United States of America and the Empire of Japan, and of the due process and equal protection clauses of the Fourteenth Amendment. (Rec. pp. 1-6.)

THE BILL OF COMPLAINT

The defendants in error are a municipal corporation, its Comptroller and Chief of Police, respectively. The plaintiff in error is a subject of the Emperor of Japan, has been a resident of the City of Seattle continuously since 1904, having duly entered the United States and having complied with all acts of Congress and regulations relating to the entry of aliens into the confines of the United States. Since the month of July, 1915, the plaintiff in error has been continuously engaged in business as a pawnbroker in the City of Seattle, during all of which time he has complied with all laws and ordinances relating to or respecting his business, and

has conducted his business honestly and in good faith. His place of business is in all respects a fit and suitable place for conducting such business and at all times has been. He speaks, reads and writes the English language. The ordinance in question was approved on the 2nd day of June, 1921. It was passed for the sole purpose of preventing any alien from securing a license to engage in business as a pawnbroker in the City, and as a part and parcel of a plan on which the City had for more than a year prior to the commencement of the action been engaged of preventing subjects of the Emperor of Japan, lawfully residing in the United States and engaging in business in the City of Seattle, from being able to carry on or engage in business for which a license so to do was required by the City. The plaintiff in error did not apply to the City for a license to engage in business as a pawnbroker as required by the terms of the ordinance in question, because it would have been utterly useless for him so to do, and because the City would not receive from him an application for a license, which refusal was because of the ordinance in question; and the City would not grant the plaintiff a license to engage in business as a pawnbroker for the sole and only reason

that he was a subject of the Emperor of Japan and not a citizen of the United States. On the 24th day of October, 1906, there was duly approved Ordinance No. 14,404, of the City of Seattle, repealed by the ordinance in question, and which did not discriminate against aliens. On the 9th day of August, 1920, the plaintiff in error duly made an application for a license to engage in business as a pawnbroker under and by virtue of the ordinance last mentioned, and for a renewal of his then license which had theretofore been granted to him by the City under such ordinance, such application being in due form and as required by the City and did all things required to be done by him for the making of such application, which application was duly referred to the License Committee of the City Council of the City of Seattle, which Committee reported thereon recommending that the license be granted, but on the 23rd day of August, 1920, the City Council refused to grant the license for the sole and only reason that plaintiff in error was a subject of the Emperor of Japan and despite the fact that he then was and at all times had been a fit and suitable person to have such license and to engage in such business, and despite the fact that his place of business then was and at

all times heretofore had been a fit and suitable place in which to carry on such business. That in order to carry on the business of a pawnbroker successfully it is necessary that the same be done continuously and without interruption in order to maintain the good will of the business and the business itself. That the defendant Comptroller has threatened to arrest the plaintiff in error because he is engaged in the business of pawnbroker without a license and will do so from day to day unless restrained by the court, and the defendant City will not permit him to have a license on the sole ground that he is a subject of the Emperor of Japan; that if arrests are made his business will be ruined and if the defendants are not enjoined from so doing they will arrest him from day to day and he will thereby suffer an irreparable damage. Plaintiff in error further alleged that at all times he has been and now is willing to comply with any valid ordinance of the City respecting his business and at all times has been ready and willing to pay the defendant City the license fee required by it for that purpose. The plaintiff in error prayed for a temporary restraining order, a temporary injunction and a perpetual injunction against the enforcement of the ordinance. (Rec. pp. 1-6.)

TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION

On the filing of the bill of complaint, a temporary restraining order was issued, as prayed for, and, upon the hearing of an order to show cause, a temporary injunction was granted accordingly. (Rec. pp. 6-10.)

THE ANSWER

The defendants in error by answer admitted the capacity of the parties as alleged, the passage and approval of the two ordinances alleged; that the plaintiff in error had been engaged in business as alleged; that he had not applied for a license and that the defendant Comptroller intended to make an arrest as alleged, but denied all other allegations in the complaint. (Rec. p. 33.)

The ordinance questioned is found on pages 26-32 of the Record. It is sufficient to call attention to the fact that, by its terms, a license must be secured from the City to engage in the business as pawnbroker and that the following provision appears in Section 6:

“Provided, however, that no such license shall be issued unless the applicant be a citizen of the United States. * * *”

Ordinance No. 14,404 mentioned in the bill, was repealed by the ordinance in question. It contained no provision making citizenship a condition precedent to a license.

THE TRIAL

On the trial of the action the plaintiff testified that he came to Seattle in 1904 direct from Japan; that he is of Japanese parentage; that he arrived at Vancouver, B. C., and, in coming to Seattle, complied with all the requests of the Immigration Department; that he has lived in the United States continuously; that he is a pawnbroker and watch maker and has been so engaged since the year 1915, occupying but one location; he had never been arrested; the police officers examined his books as they do all other pawnbrokers; he makes all reports required by the ordinance relating to pawnbrokers and all required by the police department; he reads and speaks the English language; he began business with \$1,000.00 invested capital and has now a \$5,000.00 investment; if he were compelled to go out of business, even temporarily, his trade would go elsewhere; there has never been any complaint as to his location. (Rec. 13-16.)

The court refused to permit the plaintiff to show that, under a prior ordinance, the plaintiff has been denied a license wholly because he was a subject of the Emperor of Japan, and refused to permit the plaintiff to show that the ordinance in question was passed for the purpose of preventing Japanese from securing licenses to engage in business as pawn-brokers. (Rec. 16-20.)

The trial court entered a decree adjudging the Ordinance to be in violation of the due process and equal protection clauses of the Fourteenth Amendment and enjoined the defendants from enforcing the ordinance against the plaintiff in error until such time as the City should grant him a license. On appeal to the Supreme Court of the State, that court held, first, that the business of a pawnbroker was a privilege only and could be prohibited to all persons, and second, that the plaintiff in error was not protected by the due process and equal protection clauses of the Fourteenth Amendment or by the Treaty between the United States and Japan.

SPECIFICATIONS OF ERROR

The assignments of error appear on pages 41-42 of the Record. They allege that the court erred in holding the ordinance constitutional and not

in violation of the due process and equal protection clause of the Fourteenth Amendment and of the Treaty between the United States and the Empire of Japan.

PROPOSITIONS DISCUSSED

The propositions we desire to discuss are:

1. A business, occupation or calling cannot be prohibited by a state legislature unless there is *inherent* in the business, occupation or calling *itself*, irrespective of the character of some men who may engage in it, some evil or direct tendency to evil.
2. The business of pawnbroker is lawful and legitimate and cannot be prohibited by the legislature.
3. The City cannot decline to grant a license to the plaintiff in error merely because he is a subject of the Emperor of Japan.
4. The Treaty does not permit of the refusal of the City to grant the plaintiff in error the license in question.

A BUSINESS, OCCUPATION OR CALLING CANNOT BE PROHIBITED BY A STATE LEGISLATURE UNLESS THERE IS INHERENT IN THE BUSINESS OCCUPATION OR CALLING ITSELF, IRRESPECTIVE OF THE CHARACTER OF SOME MEN WHO MAY ENGAGE IN IT, SOME EVIL OR DIRECT TENDENCY TO EVIL.

An argument has been made to the effect that engaging in business as a pawnbroker is a privilege and not a right and that, therefore, the City may say to one man that he may and to another that he may not engage in the business and enforce its mandate by criminal prosecution. The argument of privilege is based on the contention that thieves frequently resort to pawnbrokers to sell stolen articles, and that by reason of such practice the City has a right to prohibit all men from engaging in business as pawnbrokers. It is believed that the argument seriously mistakes the limit of the right of prohibition and confounds that right with the right of mere regulation under the police power. It is believed that the opinion of the Supreme Court proceeds upon the theory that, under police power, the City has the right to regulate the business, and, having the power of regulation, it necessarily follows that it has the power of prohibition. No greater fallacy could be suggested. Every business, every profession and every calling is subject to the police power but the power to regulate is not always the power to prohibit. The state, under its police power, may regulate the business of a warehouseman and require the taking out of a license as a condition precedent to engag-

ing in that business, but cannot prohibit the business.

Cargill Company v. Minnesota, 180 U. S. 452, 468.

The state, under the police power, may require an employment agent to take out a license as a condition precedent to engaging in the employment business.

Brazee v. Michigan, 241 U. S. 340.

But the state cannot proscribe and prohibit the employment business.

Adams v. Tanner, 244 U. S. 590.

The rule is that businesses or occupations may be prohibited when, and only when, there is inherently in the businesses, occupations or callings, themselves, without regard to the men or character of men who at times engage in them, a menace to the public welfare, or a tendency to that which is harmful. This rule is well illustrated by the cases from this court as shown by the following subjects:

Lotteries were prohibited constitutionally by the states, not only because they were a form of gambling, but because the inevitable tendency was to impoverish the public.

Phelan v. Virginia, 8 Howard 163.

In that case the court said:

"The suppression of nuisances injurious to public health or morality is among the most important duties of government. Experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lotteries. The former are confined to a few persons and places but the latter infests the whole community; it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor; it plunders the ignorant and simple."

The manufacture and sale of intoxicating liquors can be lawfully prohibited by the states because of the inherent nature of intoxicating liquor, its effects upon those using it to excess, and the attendant effects upon the public at large.

Mugler v. Kansas, 123 U. S. 623, 662.

Crowley v. Christensen, 137 U. S. 86, 90.

In the latter case the court said:

"There is in this position an assumption of a fact which does not exist, that when liquors are taken in excess the injuries are confined to the party offending: The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and in the self-abasement which it creates. But, as it leads to neglect of business and waste of property and general demoralization, it affects those who are immediately connected with and dependent upon him. By the

general concurrence of opinion of every civilized and Christian community, there are few sources of crime and misery to society equal to the dram shop, where intoxicating liquors, in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every state show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons, than to any other source. The sale of such liquors in this way has therefore been at all times, by the courts of every state, considered as the proper subject of legislative regulation. Not only may licenses be exacted from the keeper of a saloon before a glass of his liquors can be disposed of, but restrictions may be imposed as to the class to whom they may be sold, and the hours of the day, and the days of the week, on which they may be sold. Their sale in that form may be absolutely prohibited. It is a question of public expediency and public morality and not of federal law. The police power of the state is fully competent to regulate the business—to mitigate its evils or to suppress it entirely. There is no *inherent* right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of a state or a citizen of the United States. As it is a *business* attended with danger to the community it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulations rests in the discretion of the governing authority. That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on, and to issue licenses for that purpose. It is a matter

of legislative will only. As in many other cases, the officers may not always exercise the power conferred upon them with wisdom or justice to the parties affected. But that is a matter which does not effect the authority of the state, or one which can be brought under the cognizance of the courts of the United States."

Cigarettes may be prohibited, not only as to manufacture, but as to use, by the state because of their inherent effect upon the users.

In the case of *Austin v. Tennessee*, 179 U. S. 343, 361, the court said:

"There is doubtless fair ground for dispute as to whether the use of cigarettes is not hurtful to the community, and therefore it would be competent for a state, with reference to its own people, to declare, under penalties, that a cigarette should not be manufactured within its limits. No one could say that such legislation trench'd upon the liberty of the citizen by preventing him from pursuing a lawful business."

The Act of Congress prohibiting the transportation of lottery tickets in interstate commerce was upheld by this court for the same reason, in the case of *Champion vs. Ames*, 188 U. S. 321, 355, where the court said:

"In determining whether regulation may not under some circumstances properly take the form or have the effect of prohibition, the

nature of the interstate traffic which it was sought by the act of May 2, 1895, to suppress cannot be overlooked. When enacting that statute Congress no doubt shared the views upon the subject of lotteries heretofore expressed by this court. In *Phelan v. Virginia*, 8 How. 163, 168, 12 L. Ed. 1030, after observing that the suppression of nuisances injurious to public health or morality is among the most important duties of government, this court said: 'Experience has shown that the common forms of gambling are comparatively innocuous when placed in contact with the widespread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community; it enters every dwelling; it reaches every class; it preys upon the hard earning of the poor; it plunders the ignorant and simple' * * *

"If a state, when considering legislation for the suppression of lotteries within its own limits, may properly take into view the evils that *inhere* in the raising of money, in that mode, why may not Congress, invested with the power to regulate commerce among the several states, provide that such commerce shall not be polluted by the carrying of lottery tickets from one state to another? * * * We have said that the liberty protected by the Constitution embraces the right to be free in the enjoyment of one's faculties; 'to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper,' *Allegeyer v. Louisiana*, 165 U. S. 578, 589, 41 L. Ed. 832, 835, 17 Sup. Ct. Rep. 426, 531. But surely it will not be

said to be a part of anyone's liberty, as recognized by the supreme law of the land, that he shall be allowed to introduce into commerce among the states an *element* that will be confessedly injurious to the public morals."

It must be remembered that the power of Congress over interstate commerce is nothing more or less than a grant of police power by the states to Congress over that particular subject, and that the power to regulate, manifests itself in precisely the same ways as does the police power when exercised by the states, that is, in the matter of prohibition of certain things and regulation of others.

The purchase and sale of commodities on margins can be constitutionally prohibited by the legislature because of the tendency to gambling, even though the act is broad enough to prohibit all such transactions, including those in which there is no element of gambling whatever.

Otis & Gassman v. Parker, 187 U. S. 606.

In that case the court said:

"We cannot say that there might not be conditions of public delirium in which at least a temporary prohibition of sales on margin would be a salutary thing. Still less can we say that there might not be conditions in which it reasonably might be thought a salutary thing, even if we disagreed with the opinion. *Of*

course, if a man can buy on margin he can launch into a much more extended venture than where he must pay the whole price at once. If he pays the whole price he gets the purchased article, whatever its worth may turn out to be. *But if he buys stocks on margin he may put all his property into the venture, and being unable to keep his margins good if the stock market goes down, a slight fall leaves him penniless, with nothing to represent his outlay except that he has had the chances of a bet.* There is no doubt that purchases on margin may be and frequently are used as a means of gambling for a great gain or a loss of all one has. It is said that in California, when the constitution was adopted the whole people were buying mining stocks in this way, with the result of *infinite* disaster."

The direct statement by this court is found in the case of *Murphy v. California*, 225 U. S. 623, where the court said:

"The Fourteenth Amendment protects the citizen in his right to engage in any lawful business but it does not prevent legislation intended to regulate useful occupations which, because of their nature or location, may prove injurious or offensive to the public. Neither does it prevent a municipality from prohibiting any business which is *inherently* vicious and harmful."

The manufacture of oleomargarine may be constitutionally prohibited by the state because of the tendency of oleomargarine to deceive the public.

McCray v. United States, 195 U. S. 27, 63.

In that case this court said:

"As we have said, it has been conclusively settled by this court that the tendency of that *article* to deceive the public into buying it for butter is such that the states may, in the exertion of their police powers, without violating the due process clause of the Fourteenth Amendment, absolutely *prohibit* the manufacture of the article."

The use of trading stamps can be prohibited for the same reason.

Rast v. Van Deman, 240 U. S. 342, 364.

In that case this Court said:

"But there may be partial or total dispute of the propositions. *And it can be urged that the reasoning upon which they are based regards the mere mechanism of the schemes alone, and does not give enough force to their influence upon conduct and habit, not enough to their insidious potentialities.* As to all of which not courts, but legislatures, may be the best judges, and, it may be, the conclusive judges." * * *

"The *schemes* of complaints have no such directness and effect. They rely upon something else than the article sold. They attempt by a promise of a value greater than that article and apparently not represented in its price, and it hence may be thought that thus by an *appeal* to cupidity lure to improvidence. This may not be called in an exact sense a 'lottery,' may not be called gambling; it may, however, be considered as having the seduction

and evil of such, and whether it has may be a matter of inquiry—a matter of inquiry and of judgment that it is finally within the power of the legislature to make."

The above rule was reiterated by this Court in the case of *Tanner v. Little*, 240 U. S. 368, 384, where the court said:

"However, a decisive answer to the question need not be given, for we have said, in *Rast v. Van Deman & L. Co.*, that the 'premium system' is not one of advertising merely. It has other, and, it may be, deleterious, consequences. It does not terminate with the bringing together of seller and buyer, the profit of one and the desire of the other satisfied, the article bought and its price being equivalents. It is not so limited in its purpose or effect."

The principle was stated a great deal more explicitly by this Court in the case of *Clark Distilling Co. v. Western Maryland R. Co.*, 242 U. S. 311, 322, where it is said:

"Before concluding, we come to consider what we deem to be arguments of inconvenience which are relied upon; that is, the dread expressed that the power by regulation to allow state prohibitions to attach to the movement of intoxicants lays the basis for subjecting interstate commerce in all articles to state control, therefore destroys the constitution. *The want of force in the suggested inconvenience becomes patent by considering the principle*

which, after all, dominates and controls the question here presented; that is, the subject regulated and the extreme power to which that subject may be subjected. The fact that regulations of liquor have been upheld in numberless instances which would have been repugnant to the great guaranties of the constitution but for the *enlarged right* possessed by government to regulate liquor has never, that we are aware of, been taken as affording the basis for the thought that government might exert an enlarged power as to subjects to which under the constitutional guaranties, such enlarged power could not be applied. In other words, the exceptional nature of the subject here regulated is the basis upon which the exceptional power must rest, and affords no ground for any fear that such power may be constitutionally extended to things which it may not, consistently with the guaranties of the constitution, embrace."

Again, in the case of *Wilson v. New*, 243 U. S. 332, 346, it is said:

"It is equally certain that where a particular subject is within such authority, the *extent* of regulation depends on the nature and *character* of the *subject* and what is appropriate to its regulation. The powers possessed by government to deal with a subject are neither inordinately enlarged or greatly dwarfed because the power to regulate interstate commerce applies. This is illustrated by the difference between the much greater power of regulation which may be exerted as to *liquor* and that which may be exercised as to *flour, dry goods* and *other commodities*. It is shown by the

settled doctrine sustaining the right by regulation absolutely to prohibit *lottery tickets*, and by the obvious consideration that such right to prohibit could not be applied to *pig iron, steel rails or most of the vast body of commodities.*"

Again, in *Adams v. Tanner*, 245 U. S. 590 this Court, in holding that the employment agency business could not be prohibited, said:

"But we think it plain that there is nothing *inherently immoral or dangerous to the public welfare in acting as paid representative of another to find a position in which he can earn an honest living.*"

Some ministers of the gospel have violated not only the moral but the statutory law as well and are serving terms in prison; some grocers have put sand in the sugar, and sold as pure, adulterated articles, and have sold short weight; some dairymen have put water in milk and sold it as milk; some tradesmen have sold articles under misrepresentation as to quality; some employment agents have been thoroughly dishonest and criminal in their business; some bankers have stolen depositors' funds; and in every walk of life, in every business, in every occupation, can be found engaged dishonest and unscrupulous men; but no one has yet successfully contended that lawful occupations can be damned to every honest man by reason of the dishonesty of

a few. The same argument is made to sustain this ordinance as was made to sustain *Initiative No. 8*, of this state, which prohibited any employment agent from charging a fee, reward or compensation for securing employment for anyone or for furnishing information leading thereto, and the state-court listened with approval to the argument.

Huntworth v. Tanner, 87 Wash. 670.

State v. Rossman, 93 Wash. 530.

But those decisions were contrary to the constitution of the United States.

Adams v. Tanner, 244 U. S. 590.

In that case this Court, in holding that the employment agency business could not be prohibited to all men by reason of the dishonesty and abuses which sometimes occurred in it, said:

“Because abuses may, and probably do, grow up in connection with this business, is adequate reason for hedging it about by proper regulations. But this is not enough to justify destruction of one’s right to follow a distinctly useful calling in an upright way. Certainly there is no profession, possibly no business, which does not offer peculiar opportunities for reprehensible practice: and as to every one of them, no doubt, some can be found ready earnestly to maintain that its suppression would be in the public interest. Skillfully directed agitation might also bring about ap-

parent condemnation of any one of them by the public. Happily for all, the fundamental guaranties of the Constitution cannot be freely submerged if and whenever some ostensible justification is advanced and the police power invoked."

That there may be no mistake as to the extent to which arguments similar to that made by the defendants in error was made in favor of Initiative No. 8, we invite this Court's attention to the vigorous dissenting opinion of Mr. Justice Brandeis, in the case last cited.

There must, of course, be a limit to the power of legislative prohibition. Necessarily that limit must be fixed. If the test be not found in the inherent characteristics or nature of the act in question, then there is no test, but the limit of legislative action is dependent, in the final analysis, upon the personnel of this Court, and conceivably what would be an inherent right, beyond legislative prohibition at one time, might, by reason of nothing more than a change in the membership of this Court become a privilege merely, and subject to legislative prohibition. It seems impossible to believe that what we have been wont to regard as constitutional rights are not fixed and are not beyond the changing views of men, and that what is a constitutional right

today conceivably may not be such tomorrow, although the constitution may not have been amended.

It is, therefore, confidently submitted that the right to prohibit must be found in the inherent nature or characteristic of the business at which the legislative act is directed.

THE BUSINESS OF PAWNBROKER IS LAWFUL AND THE LEGISLATURE CANNOT PROHIBIT ANY HONEST MAN FROM ENGAGING THEREIN.

The business of pawnbroker, both as defined in Section 3 of the ordinance and as it is commonly understood, is merely the loaning money on pledged personal property, the physical custody of which is actually delivered to and held by the pledgee until payment. The loaning of money has become so general that if it were suddenly stopped the business of the world would immediately cease with it, in which event the large financial centers of the United States would be in absolute panic. There is nothing inherently wrong in the borrowing of money or in the loaning of it. No one even so contends. One of the most common practices is the giving of security for the loan, and indeed the amount of money borrowed without security is comparatively small. The very large part of money borrowed is on pledge of

collateral. As a matter of fact, and law, it is immaterial whether the collateral is a bond or physical personal property. In either event the pledged property stands as a guarantee of payment and the borrower has secured the sum he desires to borrow and the lender has loaned the amount he desires to lend. Of course, it cannot be seriously asserted that the pledge of collateral security to a bank or a money loaning institution is lawful and legitimate, and has no evil tendencies, inherent in the transaction, but that a loan from a pawn broker and the pledging of physical personal property with him as security for the payment is not legitimate and is not lawful and does have in it inherently tendencies to evil. The one is just as lawful and just as legitimate as the other and equally free from any inherent evil or tendency to evil, and no amount of argument can change this self evident fact. It is said that thieves sometimes resort to dishonest pawnbrokers for the purpose of disposing of stolen property. What of it? Does one dishonest pawnbroker have it in his power to damn the business to all honest men? Is it not a question of the personality of the pawnbroker in the final analysis, and does anything but the personality of the pawnbroker have anything whatever to do with the question whether the business is carried on honestly or dishonestly?

Nor can it justly be said that the business is such that it cannot be carried on honestly, nor, in the great majority of cases, that it is not carried on honestly. Of course, there are dishonest men in that business as well as in every other known business, but that is no reason for prohibiting the business to all honest men. The assumption, or the fact if it be fact, that the business offers temptation to an honest man to practice dishonesty does not justify legislative prohibition of the business. The temptations surrounding an employment agent are forcibly stated in the dissenting opinion of Mr. Justice Brandies in the case of *Adams vs. Tanner*, 244 U. S. 500, but they are not grounds for prohibiting the business.

Nor can it be said that the pawnbroker does not furnish needed service. It is so unnecessary to go into detail as to the service that he does furnish, and the needy people to whom that service is furnished, that we shall not burden the court with a detailed statement of it. The fact is entirely obvious. Suffice it to say that but for the service he furnishes, many needy people would be without the necessities of life, on those occasions when misfortune or adversity overtakes them.

The action of the city itself forecloses it from contending that the business of a pawnbroker is not a lawful business. Subdivision 33 of Section 8966 of Remington's Compiled Statutes is as follows:

"Any such city shall have power—

"33. To grant licenses for any lawful purpose, and to fix by ordinance the amount to be paid therefor, and to provide for revoking the same: Provided, that no license shall be granted to continue for longer than one year from the date thereof."

If the business is not lawful the City cannot license it. The City, however, is asserting the power to license the business, and it thereby is foreclosed from contending that the business itself is not lawful. Furthermore, the business is recognized as lawful by the statutes of the state. Remington's Compiled Statutes, Sections 2481-2488.

Judge Mackintosh, speaking for the court, said:

"In certain of its aspects, pawnbroking may be harmless, but, on the other hand, it is common knowledge that both on account of the nature of the business itself and somewhat on account of the character of those who engage in it, it offers a ready shelter for thievery, and to that extent, encourages criminality."

If dishonest men have engaged in the business of pawnbroking, the function of government is to see

that those men do not secure the necessary license to engage in the business, and not by one act to attempt to abolish the business. We find ourselves utterly unable to agree with the learned court that "the nature of the business itself" offers a ready shelter for thievery and that it encourages criminality, and we do not believe that any fact can be put forward in justification of that statement. There is no justification for blaming a business or a calling for the dishonesty of a few men who engage in it, to the detriment and absolute loss of many honest men who have invested their money in the same kind of business. The power of government extends to prohibiting dishonest men from engaging in business, and not prohibiting business to all honest men. The argument which is made to sustain this ordinance incontrovertably leads to the conclusion that if any dishonesty occurred in any business thereby is furnished justification for the legislature to abolish the business. Not all courts are in accord with the Supreme Court of Washington. In the case of *Louisiana vs. Ippzovitch*, 49 La. 366, the court, in speaking of the business of pawnbroker, said:

"The occupations attempted to be regulated are legitimate occupations, licensed by the

state, and the city can impose no burden upon the carrying on of these occupations not authorized by the legislature."

In the case of *Butte vs. Paltrovich*, 39 Mont. 18, the court, speaking of the same business, said:

"The mere fact that appellant's business is legitimate and specially recognized as such by legislative enactment, does not render ineffectual the power conferred by Subdivision 16 above."

Section 16 of the statute authorized the town council to license, among other occupations, pawnbrokers. In the case of *Grand Rapids vs. Braudy*, 105 Mich. 670, the question before the court was whether the legislative authority had power to require a license as a condition precedent to engaging in business as a pawnbroker. It makes no difference what the business in question is, the legislature has the power to require anyone desiring to engage therein to take out a license so to do.

In *St. Joseph vs. Levin*, 128 Mo., 588, the question before the court was whether a city could compel pawnbrokers to keep a book and enter therein a list of pledges and descriptions thereof. It is so fundamental that such a record can be required under the police power that the question whether the business was a privilege or a right could not possibly have been involved in the case.

In the case of *Elsner Bros. vs. Hopkins*, 113 Va. 47, the question was as to the validity of an ordinance making it unlawful for pawnbrokers to sell fire arms. The right to limit the sale of fire arms by anyone, whether a pawnbroker or not, is recognized everywhere.

In *Grossman vs. Indianapolis*, 173 Ind., 157, the question was whether an ordinance requiring junk dealers to take out licenses was valid and the same question was before the court in *St. Louis vs. Baskowitz*, 201 S. W. 870. The right under police power to require anyone in whatever occupation to take out a license is fundamental.

In *Levinson vs. Boas*, 150 Cal. 185, the question before the court was whether one who borrowed money from a man who was in fact a pawnbroker but who had failed to take out a license, could be compelled to repay the money, or whether the failure to take out a license as a pawnbroker made the contract void.

In the case of *Wood vs. Krepps*, 168 Cal., 382, the court, speaking of the business of pawnbroker, said:

“There is no law in the state making the business of loaning money on personal property

illegal. It is a legitimate branch of commercial business which the state has only regulated to the extent of fixing the maximum rate of interest. The business itself, however, is not affected. It is neither *malum in se* nor *malum prohibitum* * * *. There is nothing on our statute which says that it is unlawful to follow the business of loaning money at interest. Such business is not *malum in se* nor is it *malum prohibitum*."

It is believed that the business of a pawnbroker is not, in effect, different from that of buying and selling second hand goods or second hand personal property. We cannot believe that the legislature could prohibit all persons from engaging in the business of buying and selling second hand personal property, merely because of the fact, if it be a fact, that there are men engaged in the business who carry it on by dishonest means, and who connive with thieves for the purpose of aiding them in disposing of stolen property. It would be a strange doctrine if, under the Fourteenth Amendment, an honest man could not engage in a business free from inherent tendencies to evil, because of the fact that such character of business had been used by dishonest men for the accomplishment of criminal ends.

No dishonest man has any constitutional right to engage in any business or occupation in which the

public is exploited by means of his dishonesty. Nor would anyone seriously question the right of the legislature to adopt such reasonable measures as would make it impossible for dishonest men to engage in any business which might be used for the purpose of cheating or defrauding the public, or for the purpose of accomplishing dishonest transactions. In fact, the legislature at all times possesses the right, if it deems it necessary, to require everyone to secure a license to engage in any kind of business in which dishonest practices may be indulged, and by means of a licensing system, make it impossible for dishonest men to engage in such businesses or callings as afford them means to practice dishonesty.

In the case of *State vs. Bowen & Co.*, 86 Wash. 23, 28, the Supreme Court of the State of Washington, holding an act requiring commission men, that is men engaged in the business of receiving and selling farm and garden produce on commission, to take out a license as a condition precedent so to do, said:

“The particular business here sought to be regulated is, of course, a legitimate and, in many respects, a necessary and important business. The business of producing farm, garden, orchard, and dairy products is one of the most important industries of the state. The producer

cannot ordinarily be both producer and market-
er. The legislature seems to have found that
there exists a class of factors or merchants
whose principal business is that of selling such
produce on commission, and that certain abuses
have grown up in that business; so, to pro-
vide regulation and prevent such abuses, the
act in question was passed."

Of course, no one would seriously contend that
representing another, in the receipt and sale of
garden and farm produce, as his agent, honestly, is
not a constitutional right. Yet this court held that
a license might be required so to do, even in that
class of business.

Payne vs. Kansas, 248 U. S. 112.

The same may be said of the business of an em-
ployment agent.

Spokane vs. Macho, 51 Wash. 322.

Brazee vs. Michigan, 241 U. S. 340.

Adams vs. Tanner, 244 U. S. 590.

In neither case can the legislature prohibit the
business, but in either case it may enact a licensing
system by means of which dishonest men can be
kept out of the business and dishonest practices
prevented. Hence, we submit, that the power of the
legislature, with respect to the business of a pawn-
broker, extends no further than to require a license,

for the purpose of keeping dishonest men out of the business, and preventing dishonest practices therein, and that in no event can the legislature prohibit the business to honest men.

THE CITY CANNOT DECLINE TO GRANT A LICENSE TO THE PLAINTIFF IN ERROR MERELY BECAUSE HE IS A SUBJECT OF THE EMPEROR OF JAPAN.

Excepting (1) the right of the state to prohibit the ownership of lands within its border, there being no treaty to the contrary, (*Chirac vs. Chirac*, 2 Wheat, 259, 272; *Hauenstein vs. Lyman*, ¹⁰⁰ 199 U. S. 483, 484; *DeVaughn vs. Hutchinson*, 165 U. S. 565; *Clarke vs. Clarke*, 178 U. S. 186; *Blythe vs. Blythe*, 180 U. S. 333; *Terrace vs. Thompson*, decided Nov. 12, 1923); (2) the right of the state to limit the right to take the common property of the state, such as game and fish, to citizens of the state, (*McCready vs. Virginia*, 94 U. S. 391; *Patsone vs. Pennsylvania*, 232 U. S. 138); (3) the right of the state, and (there being no statute to the contrary) of any municipality therein to employ none but citizens on public work, (*Atkin vs. Kansas*, 191 U. S. 207; *Heim vs. McCall*, 239 U. S. 173); and, (4) the power to limit the right of the franchise to citizens of the state, (*Yick Wo vs. Hopkins*, 118 U.

S. 336, 370); aliens are within the equal protection clause as fully as citizens.

Ex parte Virginia, 100 U. S. 339, 345.

Yick Wo vs. Hopkins, 118 U. S. 356, 359.

Fong Yue King vs. United States, 149 U. S. 698, 724.

Wong Wing vs. United States, 163 U. S. 228, 242.

United States vs. Wong Kim Ark, 169 U. S. 649, 694.

American Sugar Refining Co. vs. Louisiana, 179 U. S. 694.

Truax vs. Raich, 239 U. S. 33.

Buchanan vs. Warley, 245 U. S. 60, 76.

Re Tiburcio Parrott, 1 Fed. 481.

Ah Kow vs. Nunan, 5 Sawy. 552.

Re Ah Fong, 3 Sawy. 144.

State vs. Montgomery, 94 Me. 192.

Templar vs. Board, 131 Mich. 254.

Re Opinion of Justices, 207 Mass. 601.

Commonwealth vs. Titcomb, 229 Mass. 14.

McKnight vs. Hodge, 55 Wash. 289, 292.

In the case of *Yick Wo vs. Hopkins*, 118 U. S. 356, 359, this Court said:

"The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: 'Nor shall any State deprive any person of life, liberty, or property